REPORT

OF

THE ROYAL COMMISSION

APPOINTED TO INQUIRE INTO

WASTE MANAGEMENT INC., et cetera

THE HON. S. H. S. HUGHES

March 30, 1978

Ontario

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PROCLAMATION

LIZABETH THE SECOND, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

TO: The Honourable Mr. Justice
Samuel H.S. Hughes
Toronto

GREETING:

WHEREAS in and by an Act entitled "The Public Inquiries Act, 1971", it is enacted that whenever Our Lieutenant Governor in Council deems it expedient to cause inquiry to be made concerning any matter connected with or affecting the good government of Ontario or the conduct of any part of the public business thereof or of the administration of justice therein and such inquiry is not regulated by any special law, she may, by commission appoint one or more persons to conduct such inquiry and may confer the power of summoning any person and requiring him to give evidence on oath and to produce such documents and things as the commissioner or commissioners deems requisite for the full investigation of the matters into which he or they are appointed to examine;

AND WHEREAS Our Lieutenant Governor in Council of Our Province of Ontario deems it expedient to cause inquiry to be made concerning the matters hereinafter mentioned;

NOW KNOW Ye that We, having and reposing full trust and confidence in you, the said Mr. Justice Samuel H.S. Hughes, of Toronto, DO HEREBY APPOINT you to be Our sole Commissioner to inquire into any wrongdoing or impropriety or any improper influence being brought to bear on members of the Ontario Government, or its Public Service on the part of officials of Waste Management Inc., Disposal Services Ltd., and affiliated Companies, or of any other individual or individuals, in respect of applications for land fill sites by the said Companies or affiliates, or any agency thereof, since 1971 to the Ministry of the Environment or the Department of the Environment or the Department of Energy and Resources Management and to report thereon and to make such recommendations to the Lieutenant Governor in Council as the Commissioner may deem fit.

AND WE DO HEREBY ORDER that Part III of the said Act entitled "The Public Inquiries Act, 1971" shall apply to the aforementioned Inquiry;

AND WE DO HEREBY FURTHER ORDER that all Our ministries, boards, commissions, agencies and committees shall assist you, Our said Commissioner, to the fullest extent and that, in order to carry out your duties and functions, you shall have the authority to engage such counsel, investigators and other staff as you deem proper, at the rate of remuneration and reimbursement to be approved by the Management Board of Cabinet;

TO HAVE, HOLD AND ENJOY the said Office and authority of Commissioner for and during the pleasure of Our Lieutenant Governor in Council for Our Province of Ontario.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent, and the Great Seal of Our Province of Ontario to be hereunto affixed.

WITNESS:

THE HONOURABLE PAULINE M. McGIBBON,
An Officer of the Order of Canada,
Bachelor of Arts,
Doctor of Laws, Doctor of University,
Bachelor of Applied Arts (Theatre),
Honorary Fellow Royal College of Physicians and Surgeons (Canada),

LIEUTENANT GOVERNOR OF OUR PROVINCE OF ONTARIO,

at Our City of Toronto in Our said Province, this fifteenth day of May in the year of Our Lord one thousand nine hundred and seventy-seven and in the twenty-sixth year of Our Reign.

BY COMMAND

MINISTER OF GOVERNMENT SERVICES

COMMISSIONER:	The Honourable S. H. S. Hughes
COMMISSION COUNSEL:	P. B. C. Pepper, Q.C. P. S. A. Lamek, Q.C.
SECRETARY:	L. W. Hiscoke, C.S.R.
INVESTIGATORS:	Detective Inspector A. K. Macleod Detective Sergeant L. Okmanas Corporal P. M. Thomson
ACCOUNTING INVESTIGATORS:	John A. Orr, F.C.A. David P. Ross, C.A.

TO HER HONOUR
THE LIEUTENANT GOVERNOR IN COUNCIL

May it please your Honour,

I, Samuel H. S. Hughes, appointed a Commissioner under the Public Inquiries Act, 1971, by a Royal Proclamation issued pursuant to Order in Council dated the 15th day of May, 1977 to inquire and report as therein directed

BEG TO SUBMIT TO YOUR HONOUR MY REPORT

TABLE OF CONTENTS

APPENDICES

CHAPTER I

Constitution of the Royal Commission

On May 12, 1977, the *Globe & Mail*, a morning daily newspaper of wide circulation published in Toronto, disclosed a contribution of $35,000 made to the Progressive Conservative Party of Ontario by Disposal Services Limited, a company engaged in the collection of industrial waste and its disposal by a process known as land-fill. The newspaper report was circumstantial, describing the donor company as a wholly-owned subsidiary of Waste Management Incorporated of Oak Brook, Illinois, in the United States. It named as president of Disposal Services Norman C. Goodhead, formerly reeve of the township (now Borough) of North York, the second largest constituent of the Municipality of Metropolitan Toronto, describing him as "a volunteer campaign-funds collector for the Ontario Tories". The article was furnished with a picture of Mr. Goodhead standing at the edge of an exhausted gravel pit near Maple, Ontario, for which his company had made an application to the Government for a land-fill permit in 1973, and which it was suggested had been granted in August, 1974, following the $35,000 contribution in the previous month.

The author of the article, one Peter Moon, attributed his knowledge to "a U.S. newspaper" which "came across it in S.E.C. correspondence that it had obtained through the U.S. Freedom of Information Act". The S.E.C. was, of course, the United States' Securities and Exchange Commission, a powerful regulatory tribunal of the federal government in that country, and the U.S. newspaper, as was also disclosed, was the *Wall Street Journal*, which had an employee make inquiries about the donation which the American authorities knew had originated with Disposal Services' parent company, Waste Management Inc. Since it had been made, two provincial elections in Ontario had intervened; one conducted on September 18, 1975, and the other on June 9, 1977, both of which had returned the Progressive Conservative Party to power in the province, but without a majority of the seats in the Legislative Assembly. Moreover, *The Election Finances Reform Act, 1975*, S.O. 1975, c. 12, came into force on the 18th day of July, 1975. This, as will be seen, made individual contributions on such a scale unlawful.

As a result of this disclosure made by a responsible journal, I was asked by the Prime Minister of Ontario, the Honourable William G. Davis, to accept a Commission under *The Public Inquiries Act, 1971*, and I was appointed on May 15, 1977 by Order-in-Council. The proclamation of this Commission in Her Majesty's name appears as a frontispiece to this Report. It will be noted that my terms of reference are:

> **". . . to inquire into any wrongdoing or impropriety or any improper influence being brought to bear on members of the Ontario Government, or its Public Service on the part of officials of Waste Management Inc., Disposal Services Ltd., and affiliated Companies, or of any other individual or individuals, in respect of applications for land fill sites by the said Companies or affiliates, or any agency thereof, since 1971, to the Ministry of the Environment or the Department of the Environment or the Department of Energy and Resources Management and to report thereon and to make such recommendations to the Lieutenant Governor in Council as the Commissioner may deem fit."**

Part III of the Act was ordered to apply to the Commission. This contains sections 15 to 17 providing for the issue of warrants to apprehend persons who have ignored a summons to attend before the Commission and to search premises and secure "any documents or things relevant to the subject matter of the inquiry".

My first concern was to secure the services of counsel and a secretary for the Commission. Mr. P. B. C. Pepper, Q.C., a Bencher of the Law Society of Upper Canada, and counsel to the Toronto firm of Fraser & Beatty agreed to act and he was joined shortly afterwards by Mr. P. S. A. Lamek (since appointed Queen's Counsel), of the same firm. Mr. L. W. Hiscoke, C.S.R., a retired Supreme Court reporter of great experience, who had acted as secretary or registrar at other inquiries, was duly appointed Secretary of this one. Detective Inspector A. K. Macleod, of the Ontario Provincial Police, was appointed chief investigator in accordance with section 17(1) of *The Public Inquiries Act, 1971*. He was assisted by Detective Sergeant L. Okmanas and Corporal P. M. Thomson, also of that force. The accounting aspect of the investigations was undertaken by the firm of Touche, Ross & Co., two of whose members, Mr. John A. Orr, F.C.A., and Mr. David P. Ross, C.A., were also appointed investigators under the same section.

The public proceedings of the Commission opened on June 3, 1977, at the Metropolitan Court House in Toronto and continued in quarters provided by the Government of Ontario for this and former inquiries at 18 King Street East. At this meeting, in addition to Mr. Pepper and Mr. Lamek for the Commission, there appeared Mr. J. F. Howard, Q.C., for Waste Management Inc. and Disposal Services Ltd., Mr. Dennis W. Brown and Mr. J. N. Mulvaney for the Ministry of the Environment,

Mr. Donald MacOdrum (later replaced by Mr. Robert J. Wright, Q.C.) for the Environmental Assessment Board, and Mr. J. Z. Swaigen representing the Maple Ratepayers' Association and Preserve Our Water Resources Group of Stouffville. I shall deal below with the question of "standing" of persons or corporations affected by the Commission's investigations, but suffice it to say that on this occasion Mr. Swaigen's clients were not accorded it.

Mr. Pepper said that since considerable investigation would be necessary before there could be any steady flow of evidence at public hearings, it would be convenient to adjourn this one to a later date, but in the meantime he filed the Order-in-Council establishing the Commission, the *Globe & Mail's* article in two editions of May 12, the original cheque from Disposal Services Limited dated July 24, 1974, for $35,000 payable to Royal Trust Co. Trust Account No. 5000, and copies of the notices of the public hearing of that day inserted in the *Ontario Gazette*, in the Toronto newspapers, *Star*, *Globe & Mail*, and *Sun*, and the *Liberal* of Richmond Hill. Then he called Detective Inspector Macleod, who produced twelve boxes of documents received from the Ministry of the Environment, the department of the government of Ontario which had jurisdiction over the granting of permits for land-fill operations. After some discussion with counsel about procedure, the hearing was adjourned *sine die* for at least two months and its resumption ordered to be advertised further. It resumed on September 12, 1977, but because of the sudden illness of Mr. Pepper which occurred just before that day and required lengthy convalescence, it was decided after the introduction of additional documents by Mr. Lamek the hearing should be adjourned once more to October 11, 1977. When that day came, as will be seen, a serious obstacle to the orderly progress of the investigation was encountered and caused further and unforeseen delay.

CHAPTER II

The Question of Standing

The Public Inquiries Act, 1971, S.O. 1971, c. 49, assented to July 23, 1971, replaced *The Public Inquiries Act*, R.S.O. 1970, c. 379. The latter was a brief enactment giving a commissioner the same power to enforce the attendance of witnesses and compel them to give evidence, produce documents and things, as was vested in any court in civil cases and providing for the stating of a case to the Court of Appeal by him upon the request of any person where the validity of the commission or of any decision or order of a commissioner was called in question. If he refused to state a case any person affected might apply for an order directing him to do so. No further proceedings were to be taken by the commissioner until the court's decision was made known. This act, by its very silence on many matters, had conferred large discretionary powers on commissioners appointed under it, and it was one of those searchingly examined by the Royal Commission Inquiry into Civil Rights, better known as the McRuer Commission, and was, as a result, repealed and replaced by *The Public Inquiries Act, 1971.* Although the government and public had come to rely upon the impartiality and judgment of commissioners under the former statute because in most cases they were judges of one kind or another, the Legislature proceeded to fetter them in respect of those qualities, generally in the interests of the subject and his rights in law. Section 5 of the new act is an example of one of the new sections.

> **"5. (1) A commission shall accord to any person who satisfies it that he has a substantial and direct interest in the subject matter of its inquiry an opportunity during the inquiry to give evidence and to call and examine or to cross-examine witnesses personally or by his counsel on evidence relevant to his interest.**
>
> **(2) No finding of misconduct on the part of any person shall be made against him in any report of a commission after an inquiry unless that person had reasonable notice of the substance of the misconduct alleged against him and was allowed full opportunity during the inquiry to be heard in person or by counsel."**

Mr. Swaigen, who is counsel to the Canadian Environmental Law As-

sociation, and who, as has been seen, applied on behalf of ratepayers in Maple and the town of Whitchurch-Stouffville, to be accorded such an opportunity at the first meeting of the commission, renewed on October 11 his request for standing under the first sub-section of section 5, reproduced above. When his application was rejected on June 3, the door had been left open to further applications should circumstances change. In the interim there had been some public agitation crystallized by resolutions of the councils of the affected municipalities to enlarge my terms of reference and directed to Premier Davis, who had, nevertheless, made it clear that I had not been appointed to conduct an inquiry into the effect on "the environment" of land-fill operations, but to investigate the possibility of corruption engendered by the Disposal Services company's political donation. Mr. Swaigen had supplied the Commission with three affidavits, one from each of the three affiants who applied for standing as individuals and also as members of the Preserve Our Water Resources Group. They were residents of the town of Whitchurch-Stouffville, where one of them, Mr. Merlyn Baker, had formerly sat on the municipal council, and was an owner of land adjoining land-fill site No. 4 in that municipality. Mr. Keith Hutchinson owned land, as he said "abutting Highway 48 immediately south of the dump site". Mr. J. H. Sanders, secretary-treasurer of the P.O.W.R. group, did not own land in the immediate neighbourhood of the site, but applied for standing personally as a drinker of water supplied by the town's wells, which he alleged were threatened with pollution. None of these affidavits alleged any knowledge relevant to the terms of my inquiry and it is clear from their contents that their makers were primarily concerned with the possibility of waste dumped upon the land-fill site polluting the local water supply. In this connection they had attended a hearing of the Environmental Hearing Board and had memorialized the Ombudsman with, among other things, complaints about that board's procedure. The submission to the Ombudsman was filed, and it is innocent of any reference to the subject of this Commission's inquiry.

Thus the lines were clearly drawn on a matter which must be of concern to all judicial inquiries: can persons who wish merely to range themselves on the side of commission counsel be entitled to the opportunity "to give evidence and to call and examine or to cross-examine witnesses personally or by (their) counsel on evidence relevant to (their) interest"? In the past persons adopting that posture had always been required to work through commission counsel, giving him their information, and leaving with him the decision as to what use should be made of it. The wording of section 5 of *The Public Inquiries Act, 1971* had not hitherto been tested. After listening to arguments from Mr. Swaigen and Mr. Pepper, I decided against giving standing to the former's clients in terms

which may be found at Appendix D, but on Mr. Swaigen's further appliation for me to state a case, I agreed to do so. Section 6 of the Act governs this procedure:

> **"6. (1) Where the authority to appoint a commission under this Act or the authority of a commission to do any act or thing proposed to be done or done by the commission in the course of its inquiry is called into question by a person affected, the commission may of its own motion or upon the request of such person state a case in writing to the Divisional Court setting forth the material facts and the grounds upon which the authority to appoint the commission or the authority of the commission to do the act or thing are questioned.**
> **(2) If the commission refuses to state a case under sub-section 1, the person requesting it may apply to the Divisional Court for an order directing the commission to state such a case.**
> **(3) Where a case is stated under this section, the Divisional Court shall hear and determine in a summary manner the question raised.**
> **(4) Pending the decision of the Divisional Court on a case stated under this section, no further proceedings shall be taken by the commission with respect to the subject matter of the stated case but it may continue its inquiry into matters not in issue in the stated case."**

It will be seen that sub-section (4) is a wholly salutary improvement upon the provisions of the previous statute, which imposed a stalemate upon the whole inquiry after a case had been stated, but under the circumstances of this case it would have been impossible to conduct further proceedings in the absence of Mr. Swaigen and his clients on the assumption that he might succeed in his application. It was obvious that no further public proceedings could be undertaken until the application had been made to the Divisional Court and its judgment handed down. Furthermore, the possibility of applying for leave to appeal to the Court of Appeal by any party and for awaiting the result of that appeal had to be taken into account. Any hope of an expeditious conclusion to the inquiry and an early report was accordingly abandoned, the public hearing was again adjourned *sine die* and I returned to my judicial duties.

The Divisional Court of the High Court of Justice clearly appreciated the urgency of deciding the stated case, the operative portion of which was as follows:

> **"Was I right in refusing the application made on behalf of the Preserve Our Water Resources Group and Messrs. J. H. Sanders, Keith Hutchinson and Merlyn Baker, for an opportunity during the inquiry to give evidence and to call and examine or to cross-examine witnesses personally or by their counsel on evidence relevant to their interests because the said group and these persons have not satisfied me that they have a substantial and direct interest in the subject matter of the inquiry since it is clear from their affidavits and all annexures thereto that their interest is in the extent to which the use of garbage as land fill in abandoned gravel pits in the vicinity of human habitation may damage the water supply and generally affect the**

amenities of habitations and in no substantial or direct manner in the subject matter set forth in my terms of reference which concerns applications for land fill sites and any wrongdoing in respect of them?"

The court (Lerner, Henry and Goodman, JJ) answered this question in the negative, "excepting as it relates to Messrs. Sanders and Baker", and the curious reader can peruse its reasons for judgment given by the Honourable Mr. Justice Lerner at length in Appendix D, which also contains a copy of the order of the court as recorded. The Attorney General, taking the view that this judgment did not interpret section 5(1) in a sense which might tie the hands of future commissioners under the statute, but applied solely to the circumstances of the case before it, decided not to apply to the Court of Appeal for leave to appeal. As a result of the court's decision, the Commission's investigating staff had to make further inquiries under the direction of counsel and at the behest of Mr. Swaigen and to peruse more files from government agencies than was originally thought necessary. Accordingly, hearings were not resumed until January 16, 1978, prior to which notice was given in the newspapers mentioned above on December 14, 1977.

CHAPTER III

Regulating Waste

Since 1934 when he was sixteen years old, Norman C. Goodhead has worked in the business of waste disposal. His experience in the early days was with incineration, and he described how the burning of garbage had fallen out of favour in Toronto because of the growing feeling that it polluted the atmosphere. In consequence additional pressure had been put upon the available land-fill sites which, in his opinion, would be inadequate by 1982. The magnitude of the problem of waste disposal was illustrated in the evidence of Ian McKerracher, Director of Refuse Disposal for the Municipality of Metropolitan Toronto, which includes the boroughs of Etobicoke, North York, Scarborough, York, and East York, as well as the City of Toronto, with a combined population of over two million souls. A rough calculation shows that each inhabitant produces about one ton of garbage per year, although its simplicity is distorted by the inclusion of waste produced by commercial and industrial establishments. Household garbage accounts for 67% of the total produced. The constituent municipalities are responsible for collecting it and taking it to what are known as "transfer stations". The metropolitan municipality is responsible for its disposal, generally speaking on its own land-fill sites. The remaining 33% of the total production belongs to the industrial and commercial establishments referred to and must be collected and disposed of by private enterprise. It is in this area that Goodhead and his associates operate.

Little imagination is needed to conjure up the different problems arising out of this situation and the difficulty of solving them. A waste disposal undertaking must have a source of supply and a means of disposal; to all intents and purposes in the situation under investigation the source of supply is from the industrial and commercial segment of the producing public, and the means of disposal is a land-fill site. The material may be liquid or solid, and liquid waste creates special problems when its disposal impinges upon the supply of pure water. Even in the case of solid waste the leaching process caused by rainfall produces a

liquid by-product, the effect of which is to create difficulties similar to those encountered in the disposal of liquid waste. As might be expected the latter-day balance between finding customers for disposal contractors and finding sites for disposal itself has tipped heavily against the latter. Ready to hand and crying aloud for replenishment are the great pits located in the moraines and eskers left by the retreating glaciers of the last Ice Age, which have supplied and still do the great appetite for concrete of our urban municipalities, particularly Toronto. These pits, sometimes vast excavations in not particularly productive soil, cannot be found everywhere and, for practical purposes, should be within easy reach of the source of demand for sand and gravel; and if, in turn, used for land-fill sites, should also be within easy reach of the source of supply of waste.

It is not surprising, therefore, that the disposal of waste looms steadily larger in the anxious minds of those municipal authorities who are trying to keep their cities clean on the one hand and to preserve the amenities of their rural environment on the other. Great strides have been made in the use of land-fill and its eventual sodding and planting after the sites are full. But with that progress has come a change in the attitudes of governments and particularly of governments at levels higher than municipal, who must plan for the future and for the welfare of the whole community. Regulation has been introduced into areas of activity never before occupied. At any given moment this regulation may be too slack for the enthusiast in the field of environmental protection and too rigid for the participant in a disposal undertaking. I propose to look for a moment at this situation as it has developed since the year 1967 when Disposal Services Limited, a partnership of companies engaged in the waste disposal business in Toronto, was incorporated.

Little more than twenty-five years ago the disposal of human and industrial waste troubled only a few devoted minds in the Ontario Department of Health. In those days, for example, the city of Hamilton, with a population of a quarter of a million, discharged its sewage into Burlington Bay in a raw state, the smaller city of St. Catharines did the same for Lake Ontario, and to a greater or lesser extent riparian communities regarded waterways as a convenient sewer. When the Department of Health first embarked upon the huge task of imposing sewage treatment upon municipalities, their efforts were met with objections that the Ontario Municipal Board would not allow municipalities the expensive treatment systems which were required; hence, the Ontario Water Resources Commission was established in 1957 to relieve the Department of Health of this responsibility and to provide financing for municipalities in this field. But as pollution caused by human waste was gradually brought under control in Ontario, the more deadly, because less soluble

industrial wastes continued to be subject only to municipal by-laws and private contracts with land owners and carriers except when causing danger to public health. For thirteen years after the establishment of the Ontario Water Resources Commission the provincial government continued to feel its way, and after organizing with conspicuous success the treatment of human waste, turned its attention to what is familiarly known as garbage and procured the enactment of *The Waste Management Act, 1970*, c. 44. This statute, which provided a system of regulalation and licensing and a Waste Management Appeal Board, was shortly succeeded by *The Environmental Protection Act, 1971*, S.O. 1971, c. 86, thereafter amended every year until 1977. This was a far more comprehensive statute, attempting to regulate pollution of air, land and water through the Department (later Ministry) of the Environment. The Ontario Water Resources Commission and some sections of the Department of Health were included in this greatly expanded organization which now, as I am informed, employs some 2,000 people.

It will be seen, therefore, that the year 1971, which is the year of departure as far as my terms of reference are concerned, was a milestone in the regulation of various activities affecting the purity of air, soil and water and it is necessary to take a close look at *The Environmental Protection Act, 1971* and the activities of the Ministry of the Environment which impinge upon those of the persons and companies whose activities were investigated by this Commission. The assiduity of counsel and the evidence of members of the staff of the Ministry have been of the greatest help to my understanding the procedures involved. A beginning must be made with the legislation which created the jurisdiction of the Ministry and created the Ministry itself. Without going back beyond the chronological framework of this inquiry it may suffice that the Ontario Department of Energy Resources, which, in turn, became the Department of Energy and Resources Management, was by S.O. 1971, c. 63 among other things renamed the Department of the Environment and this, in turn, through the effect of *The Government Re-organization Act*, S.O. 1972, c. 1, s. 67-73, became the Ministry of the Environment. These sections made many housekeeping changes and may be referred to again, but for the present it should suffice to turn to *The Environmental Protection Act, 1971* and see what was prescribed under Part V, which deals with waste management throughout the period in question. Part V consists of sections 28 to 48. I have already pointed out that the Act has been extensively and regularly amended and this process has been applied to these sections and in what appears to me, with respect, a rather unusual way. For instance, section 28, which is the definition section for Part V, read at paragraph (a): " 'Director' means the Director of the Waste

Management Branch of the Department." This was followed by paragraphs (b) to (f) and included important definitions of "waste" and "waste disposal site". Then by S.O. 1972, c. 106, s. 5(2), paragraph (aa) was added, as follows:

> **" 'Executive Director' means the Executive Director Air and Land Pollution Control Division of the Ministry."**

In S.O. 1973, c. 94 both clauses (a) and (aa) were repealed by section 10(1) and (2) so that section 28 was thereafter left to read as follows:

> **"In this Part,**
>
> .....
>
> **(b) 'operator' means the person, etc."**

More striking and more important is what happened to section 33, or to be more accurate, the sections which by S.O. 1972, c. 106, s. 7 were inserted between sections 33 and 34, known as *The Environmental Protection Amendment Act*, 1972. These were sections 33a to 33e, having nothing to do with section 33, which deals with the fact that the Minister's report to the clerk of the municipality as to the necessity of collecting waste or establishing a waste management system relieves the municipality of obtaining the assent of its electors as a prerequisite to the implementation of the report, but on the contrary, with the equally important if unrelated question of procedure upon an application for a certificate of approval to dispose of waste and whether a public hearing should be held by "the Hearing Board". These sections provide the setting for much that was done and testified to in the course of the Commission's inquiry. The Hearing Board is the Environmental Hearing Board and then became the Environmental Assessment Board, upon the enactment of *The Environmental Assessment Act, 1975*. Sections 33a to e will also have to be amended so that all references to the Executive Director are removed in favour of the Director and finally section 33e itself in 1976 appears as follows:

> **"33e. REPEALED; 1974, c. 20, s. 12"**

I have made this minor excursion into the tangled thicket of statutory amendment to show that following the development of *The Environmental Protection Act, 1971* is not easy. It is a wonder that the drafting technique alone should be considered sufficient; for the public generally, the effect must be one of bewilderment.

Extensive evidence as to the procedure under Part V of the Act, which was, in effect, the provisions of *The Waste Management Act, 1970* referred to above, was given by Mr. D. P. Caplice, one of the Directors appointed by the Minister, and head of the Environmental Approvals

Branch as of April 1, 1974 and thereafter, until the time of writing. Caplice is a chemical and civil engineer, an experienced and knowledgeable civil servant, who entered the service of the government of Ontario in 1959 as an employee of the Ontario Water Resources Commission. A convenient starting place is section 31, which reads as follows:

> **"No person shall use, operate, establish, alter, enlarge or extend,**
> **(a) a waste management system; or**
> **(b) a waste disposal site,**
> **unless a certificate of approval or provisional certificate of approval thereof has been issued by the Director and except in accordance with any conditions set out in such certificate."**

The nature of these certificates is prescribed by R.R.O. 1970, Regulation 824, as amended, ss. 8 and 9, which provide that:

> **"8. A certificate of approval for a waste disposal site or a waste management system or a renewal thereof expires one year after the date upon which the certificate or renewal is issued.**
> **9. A provisional certificate of approval for a waste disposal site or a waste management system or a renewal thereof expires on the date shown thereon."**

Mr. Caplice described how provisional certificates were favoured in the Ministry because they did not have to be renewed annually and this throws an interesting sidelight on the evolution of administrative procedures.

Section 33a(1) provides the Director with a measurement determining his course of action in the following terms:

> **"33a-(1) Where the Director receives an application for a certificate of approval for the use, operation, establishment, alteration, enlargement or extension of a waste disposal site for the disposal of hauled liquid industrial waste or hazardous waste as designated in the regulations or any other waste that the Director ascertains, having regard to the nature and quantity of the waste, is the equivalent of the domestic waste of not less than 1,500 persons, the Director shall, before issuing or refusing to issue the certificate of approval, hold a public hearing."**

Thus, if an applicant seeks to dispose of more than 1,500 tons of waste per year, other than hauled liquid industrial or hazardous waste, a public hearing must be held. In an emergency situation, which section 33b characterizes as "danger to the health or safety of any person, impairment or immediate risk of impairment of the quality of the natural environment and injury or damage or immediate risk thereof to any property or plant or animal life", the Director may issue a certificate of approval without holding a public hearing. In a case not covered by section 33a, the Director may under section 33c(1) hold a public hearing and by section 33d(1), whether he is compelled to hold one or merely elects to,

he "may by a notice in writing, and on such terms and conditions as he may direct, require the Environmental Assessment Board to hold the hearing". Then the Board:

> **"33d-(2) Upon receipt of notice from the Director, the Environmental Assessment Board shall hold a public hearing with respect to the subject-matter of the notice and shall report thereon to the Director."**

In short the Environmental Assessment Board must hold a public hearing when directed to do so by the Director and must report to him about it, although the Director conceivably can hold a public hearing himself without referring the "subject-matter" of the application to the Board.

This procedure, already extraordinary enough, becomes more so as we examine section 33d(3b) which is about hearings and is set out in full:

> **"33d-(3b) Where a hearing is required to be held under sub-section 1 by the Environmental Assessment Board,**
>
> **(a) the Board shall determine its own practice and procedure in relation to hearings and may, subject to the approval of the Lieutenant Governor in Council, make rules governing such practice and procedure and the exercise of its powers in relation thereto and prescribe such forms as are considered advisable;**
>
> **(b) the member or members conducting a hearing shall prepare and submit to the Board a draft report of the Board referred to in clause e and, after notice of the purpose of the meeting has been given to all members of the Board, the Board shall consider the draft report at a meeting of the Board called for the purpose of preparing the report and the Board in preparing the report may,**
>
> **(i) adopt the draft report,**
>
> **(ii) adopt the draft report with such changes as the Board considers advisable, or**
>
> **(iii) reject the draft report and take such other action for the purpose of preparing the report, including the holding of additional hearings, as the Board considers advisable;**
>
> **(c) a hearing by the Board is for the purpose of making a report containing information and advice and the report is not in any way legally binding in any decision or determination that may be made;**
>
> **(d) for the purposes of the exercise of any power or authority or the discharge of any duty by the Board or any member or members thereof conducting a hearing, the Board, or such member or members, has or have the powers of a commission under Part II of The Public Inquiries Act, 1971, which Part applies to the exercise of such power or authority and the discharge of such duty as if it were an inquiry under that Act; and**
>
> **(e) the report of the Board shall contain a summary of the information presented and the views expressed at the hearing and its recommendations in respect of the subject-matter of the hearing, together with its reasons therefor."**

It will be observed that the Board, constituted under *The Environmental*

Assessment Act, 1975, consisting of persons who are not members of the public service and are appointed by Order-in-Council and shown in the organization charts of the Ministry of the Environment floating serenely in an atmosphere occupied only by the Minister himself, must do what the Director tells it to do, and can only report to the same official who compelled it to sit. The report itself must be considered by the whole Board after the "member or members conducting a hearing" have prepared a draft which may in the normal course be adopted or rejected by members of the Board who have not heard the evidence. Finally, there is 33d(4) which provides:

> **"Where the Director requires the Environmental Assessment Board to hold a public hearing, the Director shall not issue or refuse to issue a certificate of approval until he has received and considered the report of the Environmental Assessment Board."**

As a result an apparatus like that of a commission under *The Public Inquiries Act, 1971* is conjured up by the wand of an official who is subordinate, in turn, to an Assistant Deputy Minister, the Deputy Minister, and the Minister himself, and the result of its deliberations may or may not have any effect upon his decision to grant or withhold a certificate of approval. That decision may be taken without reference to his superiors or to the Minister who has to answer for his conduct in the Legislative Assembly. I venture to say, with some knowledge of both the provincial and federal civil services, that this procedure is unique in both principle and practice and relieves the elected head of the Ministry not only of important powers but of awkward responsibilities.

As might be expected the Ministry of the Environment encounters from time to time vestiges of municipal authority which may provide obstacles to or the use of a waste disposal site and, clearly, as one might think, the subordinate legislation of the municipality must yield to that of the Ministry. Here, the Minister is allowed by section 35 to step forward and assume the responsibilities which are generally regarded as properly his by the law and custom of the constitution.

> **"35-(1) Where a by-law of a municipality affects the location or operation of a proposed waste disposal site, the Minister, upon the application of the person applying for a certificate of approval for the waste disposal site, may, by a notice in writing, and on such terms and conditions as he may direct, require the Environmental Assessment Board to hold a public hearing to consider whether or not the by-law should apply to the proposed waste disposal site.**
>
> **(2) Upon receipt of notice from the Minister, the Environmental Assessment Board shall hold a public hearing with respect to the subject-matter of the notice and shall report thereon to the Minister. . . .**
>
> **(5) The Minister, after receiving the report of the Environmental Assessment Board, may order that the by-law referred to in subsection 1 does not**

apply to the proposed waste disposal site and the by-law shall thereupon be deemed not to apply thereto."

Only one distinction need be noticed here; by subsection (5), he need only receive the Board's report and is not bound, as the Director is, to consider it.

In 1974 the Ministry of the Environment was reorganized, and from April of that year the new structure is revealed in a document described as "Branch and Region Organization Chart October, 1974". The Minister of the day was the Honourable William G. Newman and his Deputy Minister Mr. Everett Biggs, to be succeeded by Mr. K. H. Sharpe. The Environmental Hearing Board, still not renamed and reconstituted under *The Environmental Assessment Act, 1975*, is nevertheless shown as suitably elevated and independent under the chairmanship of Mr. D. S. Caverly. There is a marked distinction between a headquarters grouping of departments and a new Regional Operations Division, containing regional offices at Thunder Bay (Northwestern Region), Sudbury (Northeastern Region), London (Southwestern Region), Kingston (Southeastern Region), and Toronto (Central Region). The other principal operational branch was called the Environmental Assessment and Planning Division, like the Regional Operations Division presided over by an Assistant Deputy Minister. One of its components was the Environmental Approvals Branch under the direction of Mr. D. P. Caplice.

I have already noticed the importance of Mr. Caplice's position in relation to waste management, and he testified to his obvious interest in the operation of section 35 and the practical necessity of the Minister consulting him as to whether a municipal by-law should be allowed to operate in the case of any particular waste disposal site. Now, as a result of the reorganization, he was invested with the approvals function over the whole field of the Ministry's jurisdiction. He considered all applications for approval under section 8 of *The Environmental Protection Act, 1971*, as re-enacted by 1972, c. 106, s. 2, which repealed sections 8 and 9 of the original statute. The new section 8 dealt with contaminants of air and soil or as the enactment put it, "any part of the natural environment other than water". He was also responsible for the approval or otherwise of plans for water and sewage works under sections 41 and 42 of *The Ontario Water Resources Act*, R.S.O. 1970, c. 332, as amended in 1972, 1974 and 1975. Applications in these fields, as well as that of waste disposal, came to him from the regional offices, even though they were in a different branch presided over by an Assistant Deputy Minister. It has been seen how the provisions of the statute, which, of course, ante-dated the reorganization of April 1, 1974, made the Director paramount in the case of waste management. As a result of the reorganiza-

tion and at a time critical to this inquiry, Mr. Caplice as Director of the Environmental Approvals Branch, held all the threads in his hands and the Minister and the senior officials of the department did not. This must be considered of importance in considering the inferences which are open to me at a later stage in this report.

CHAPTER IV

Constitution of The Companies

I turn now to the narrative of events derived from the evidence given at the public hearings of this Commission and except where otherwise explained or commented upon, a statement of fact must be considered a finding of fact after consideration of that evidence and the arguments of counsel addressed to me on the last days, February 9 and 10, 1978.

Disposal Services Limited was incorporated in 1967, but according to the evidence of Mr. Goodhead, it was in business at least as a partnership from 1960 onwards and was owned by Goodhead, Max Solomon and three members of the latter's family in equal shares. Goodhead had been a member of the council of the township of North York from 1956 to 1959 and, thereafter, reeve from 1959 to 1964. From 1967 to at least 1975, he was either a director or an officer of the incorporated company and when he was not president evidently Solomon was. On August 9, 1972, the shares of the company were bought by Waste Management Incorporated, a Delaware corporation with its headquarters in the environs of Chicago, Illinois. In December of that year Waste Management Inc. also acquired York Sanitation Company Limited, a competitor of Disposal Services Limited, of which more will be heard since both companies carried on land-fill operations in the regional municipality of York. It will be convenient to consider their operations and the applications they made to the Ministry of the Environment separately to avoid confusion, at least until their dumping of industrial waste was conjoined by force of circumstance.

Disposal Services Limited wholly owns five companies, viz. Disposal Materials Limited, Disposal Services (Western) Limited, Lilleshall Investments Limited, Lochinver Holdings Limited, and Sanitary Landfill Limited, the last being an inactive company. All of these passed into the hands of Waste Management Inc. when the American company bought the shares of Disposal Services.

Superior Sand, Gravel & Supplies Limited

After this purchase Goodhead and Solomon were, according to the former, to be retained as either officers or directors or both of Disposal Services for five years. It may be that this period was abbreviated but if it was and for what reason we do not know. Since January, 1976, Goodhead has become a director of York Sanitation Company and remains one to this day, so that whatever happened did not signify any breach with Waste Management. At the time of the sale of Disposal Services its principals had acquired control of Superior Sand, Gravel and Supplies Limited, a company incorporated in 1946 and sharing with another called Crawford Allied Industries Limited in the ownership of most of the huge and desolate area known as the Maple Pits in the town of Vaughan, immediately north-east of the village of Maple. (See Appendix F) They are cavernous and are said to be capable of holding 600,000,000 tons of waste, i.e. Metropolitan Toronto's output for at least 25 years. They had been mined for many years and continue to supply sand and gravel in large quantities. Superior, for instance, was and is still engaged in that type of mining and has entered into an agreement with Waste Management Inc. which permits the latter through its subsidiaries, to have "first refusal" of the right to replace Superior's excavations with land-fill for waste disposal. In fact Superior had made applications for use of areas owned by it as waste disposal sites in reality on behalf of Disposal Services, with whom it had an agreement. There is no secret about the relationship between Disposal Services and York Sanitation Company, subsidiaries of Waste Management Inc., and Superior Sand, Gravel and Supplies, linked as they are by Norman Goodhead and Max Solomon, the latter, be it said, not being any longer active in management. Finally, and partly as a result of pressure from the Ministry of the Environment, Crawford Allied Industries, a public company, has given options to Superior which in the near future will enable the latter to acquire control of it, and thus reign supreme in the Maple Pits.

The Commission's investigators carefully examined the records of Superior Sand, Gravel and Supplies Limited to identify the shareholders and a complex situation was revealed. There were 3,503 ordinary shares divided equally between two companies, Fairlight Holdings Limited and Verona Investments Limited, each of which held 1,751 shares, and jointly owned the remaining one. Looking at Fairlight Holdings first, its capital was divided into one hundred shares held as follows:

NAME OF COMPANY	*DATE OF INCORPORATION*	*NUMBER OF SHARES*
ICHING INVESTMENTS LIMITED (Max & Lillian Solomon)	Aug. 29, 1972	40

THORHILD MANAGEMENT LIMITED (Phineas Schwartz)	May 15, 1968	7
NAM HOLDINGS LIMITED (Norman Goodhead & Phineas Schwartz)	May 15, 1968	45.276
VALLEY AQUATIC FARMS LIMITED (Kenneth & Doreen Gariepy)	Aug. 1, 1974	4
AURORA CANADESE, S.A.	Dec. 12, 1972	3.724

It will be noted that under the name of the company holding shares the names of its proprietors are shown in brackets. Since the investigation was first conducted, Valley Aquatic Farms Limited has disposed of its shares to Nam Holdings Limited. The case of Aurora Canadese S.A. (Société Anonyme) of Luxembourg provoked further investigation because of the failure to identify the beneficial owners of the shares. Aurora Canadese was a Luxembourg company administered in Switzerland and I shall return to its affairs after dealing with the other half-owner of Superior Sand, Gravel and Supplies Limited known as Verona Investments Limited.

This was a company incorporated on September 29, 1972, and offering 2,500 shares. Here the holdings are somewhat more involved because 323 shares out of 1,751 are said to be held by Toro Asphalt Co., a partnership, and sub-allotted, as it were, to three tributary companies, Toronto Asphalt and Building Products Limited as to one-quarter, this being owned by Thomas DeToro as is Metro Asphalt and Building Products Limited in respect of another quarter, both of which were incorporated on March 14, 1956. The remaining half is owned by Toro Asphalt Limited, a company incorporated in 1955 and owned or otherwise controlled by John Edwin DeToro. The DeToros are said to be the sons of John Michael DeToro, deceased, whose connection with Aurora Canadese, S.A. will be referred to below. The remaining shareholders of Verona Investments Limited are as follows:

NAME OF COMPANY	*DATE OF INCORPORATION*	*NUMBER OF SHARES*
NAM HOLDINGS LIMITED (N. Goodhead & P. Schwartz)	May 15, 1968	125

FRED GIARDINO		323
GAR-ZEN LIMITED (Zentil-Rohr-Morassutti)	Sept. 5, 1963	323
E. LORENZETTI		646
AURORA CANADESE, S.A.	Dec. 12, 1972	760

It should be observed that Phineas Schwartz, who is a partner of Messrs. Goodman & Goodman, barristers and solicitors, of Toronto, was until 1970 practising law with Messrs. Borden & Elliot also practitioners in the same place. His clients Goodhead and Disposal Services followed him from Borden & Elliot to Goodman & Goodman and the Commission was indebted to Mr. Schwartz for much of the information which is discussed here and was given in evidence principally by himself.

Aurora Canadese, S.A.

This evidence was being discussed and amplified by Norman Goodhead before the Commission on January 17, 1978, and he was asked to supply the names of the principals of Aurora Canadese, S.A. He said he would rather not answer the question because he had given a solemn undertaking when the investment in Superior Sand, Gravel and Supplies was made that he would not disclose their identity, although he said they were Italians living in Italy. Something of a sensation was produced by Mr. Goodhead's resolution. Mr. Howard quite properly intervened between his client and the inevitable consequences of a forthright refusal to answer, and it was agreed that the witness should continue with his evidence and the matter be raised again at its conclusion. When that time came, and after much discussion, Mr. Howard undertook that as soon as possible the most active of the principals of Aurora Canadese, S.A. would fly to Toronto and testify in person as to the affairs of the company; under these circumstances Mr. Goodhead was not pressed to answer.

The evidence was given on February 3, 1978, at a hearing held at the Commission's regular offices, as announced at the previous sittings, but held *in camera* pursuant to section 4 of *The Public Inquiries Act, 1971*. That section is as follows:

> **"4. All hearings on an inquiry are open to the public except where the commission conducting the inquiry is of the opinion that,**
>
> **(a) matters involving public security may be disclosed at the hearing; or**
>
> **(b) intimate financial or personal matters or other matters may be disclosed at the hearing that are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure**

> **thereof in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public,**
>
> **in which case the commission may hold the hearing concerning any such matters in camera."**

It is not peculiar to this statute but appears also as section 9 of *The Statutory Powers Procedure Act, 1971*, c. 47, in almost identical terms, except for the substitution of "tribunal" for "commission". A great deal more latitude is allowed in this respect to a commission under *The Public Inquiries Act, 1971*, and tribunals under other Ontario statutes, than is allowed to a court of law. Since it was represented to me that the holding by Italian nationals of property in foreign countries to the value of 6,000 lire or more was contrary to a recent Italian law, the product of increasing pressure of the Communist Party which was pledged to overthrow the established government in that country, I had no hesitation in finding that the information sought by this commission constituted "intimate financial or personal matters" and that this witness might properly receive the protection of a hearing *in camera.* A more unusual suggestion in this connection was that the name of the witness should be withheld and supplied only to myself; this was considered necessary because of the relentless inquisitiveness of the local press, representatives of which made persistent efforts to discover the identity of the witness. At the conclusion of his evidence given under oath, the witness's passport and a card bearing his name were handed up to me for inspection, and after I had satisfied myself that the passport photograph was a true likeness I returned this document to him. I was satisfied that he spoke the truth, that the shares held by Aurora Canadese, S.A. of both Fairlight Holdings Limited and Verona Investments Limited had been a bona fide purchase by the Luxembourg company from John Michael DeToro, a friend of the principals of Aurora Canadese, S.A., and that these were indeed, as they represented themselves to be, Italian nationals living in Italy with no connection with members of the government or public service of Ontario, either as relatives or trustees.

I have to record with regret that even though representatives of the Toronto press were advised of the decision to hold an *in camera* hearing and to protect the identity of the Italian witness, a most determined attempt was made to take photographs and otherwise discover him. It is unfortunate that great daily newspapers in a free country feel that they cannot accept the assurances of constituted authority in a matter of this kind. From the beginning it was made clear to both the witness and his counsel that if I thought it in the public interest to disclose his name or the nature of the evidence which had been given, I would do so. As a result of the evidence, further inquiries were made and Mr.

Harry Wolfe, barrister and solicitor, testified to the transfer of shares by the executors of John Michael DeToro and Nam Holdings Limited, subsequently by his executors. No wrongdoing, impropriety or improper influence, as contemplated by my terms of reference were, as I find, either committed or contemplated in this transaction, and I find that the public interest would not be served by further investigation or disclosure.

CHAPTER V

Disposal Services Limited and Maple

The village of Maple, which in the municipal sense is part of the town (formerly township) of Vaughan, has as a main street a thoroughfare now called Major Mackenzie Drive, which runs east and west from one side of the Regional Municipality (formerly county) of York to the other. The new name celebrates the career of a former representative in the Legislative Assembly and hero of the First World War, his rank being included no doubt to avoid confusion with a namesake generally associated in the public mind with the rebellion of 1837 concluded not far away at Montgomery's Tavern. Maple has become in recent years a dormitory for many people working in Toronto, access to which is provided by a northerly extension of Keele Street in that city and completing the village's main intersection where it crosses Major Mackenzie Drive. The north-easterly quadrant of this intersection, extending eastwards from Keele Street to Dufferin Street, and northwards to the Teston Sideroad, contains the greater part of the Maple Pits, as will be seen from the map at Appendix F. The Teston Sideroad, which is the next concession line north of Major Mackenzie Drive, runs eastward from Keele Street and peters out in the excavations, but adjoining it to the north is an area also devoted to sand and gravel mining and the dumping of waste, part of which is described as the Avondale site, part as the town of Vaughan dump, part as the 43-acre site, part as the 20-acre site, and another 33 acres as "zoned agricultural" and not developed. Disposal Services Limited made an application under *The Waste Management Act, 1970*, to the then Department of Energy and Resources Management dated January 5, 1972, for a certificate of approval for sanitary land-fill on 96 acres described as part of Lot 26, Concession 3, of that township, evidently including all but the town dump and the Avondale site. This was part of a more comprehensive application which had been made on February 12, 1971, and in the course of the year had been, after much confusion, simplified as a result of one of the engineers of the Central Region of the Ministry of the

Environment, K. R. Wilk getting Norman Goodhead to simplify the application and concentrate upon active waste disposal sites and a waste disposal system. One of the prerequisites for a certificate of approval was a letter from the municipality where the site lay certifying that the applicant was not contravening any municipal by-law. After prolonged delay in considering the matter, the town of Vaughan on January 5, 1972, refused to supply one.

It is unnecessary to delve deeply into the politics of the town of Vaughan, but two considerations contributed to this decision. First of all 33 of the 96 acres involved — the most westerly 33 acres north of the Teston Sideroad—were zoned as agricultural land and land-fill operations were not permitted under the by-law. Secondly an agreement between Disposal Services Limited and Vaughan concluded in 1966 had stipulated the maximum height of the land-fill on the 43-acre parcel which by 1972 was nearing repletion. This limit had long since been exceeded and the town maintained that its by-law requiring the provision of maps to indicate this maximum vertical height had not been complied with. This difficulty was set out in a memorandum to the appropriate departmental file by Mr. Wilk, who concluded as follows:

> **"For general interest, Disposal Services Ltd. control approximately 350 acres in the vicinity of the landfill site. At this time, the Company is negotiating a general contract with the town of Vaughan concerning the development of this 350 acres. The town seems to be using the by-law section of the Environmental Protection Act as one means of applying pressure to the Company in their negotiations over this 350 acre parcel of land.**
>
> **The operation of this sanitary landfill site is quite reasonable and is considered by the Central Regional office as environmentally acceptable. However, this question about the Municipal by-law will have to be resolved by our legal branch or at an advisory board hearing. Therefore, the recommendation from the Regional Engineer is to refuse this certificate on the grounds that the applicant is unable to supply our department with a certificate from the town of Vaughan stating that the operation of the landfill site does not contravene any municipal by-laws."**

It is difficult to understand the recommendation in the last sentence if no consideration had yet been given by the Ministry's legal branch, but on March 30 a notice was dispatched to Disposal Services Limited by the Director of the Waste Management Branch, advising it of the refusal of the application for the following reason:

> **"Your failure to furnish a certificate from the municipality in which the waste disposal site is located that the waste disposal site does not contravene any of the by-laws in the municipality as required under Section 35, sub-section (1) of the Environmental Protection Act, 1971."**

The applicant, who had proposed to deposit up to 1,200 tons of industrial

waste a day, was advised of its right of appeal under section 78 of the statute to what was then known as the Pollution Control Appeal Board, to be perfected within 15 days.

Disposal Services Limited was still dumping on the 43-acre site and this activity had provoked a protest from the Maple Ratepayers' Association earlier in the year which suggested artlessly to the Department of Energy and Resources that it had been doing so with "a licence" and were advised that no certificate of approval had yet been issued. I say "artlessly" because it emerged in evidence that the policy of the department was to introduce controls without interrupting more than absolutely necessary the work of waste disposal, and it was pointed out that Disposal Services had originally applied under *The Waste Management Act, 1970* and within the prescribed time limit; that act did not provide for a certificate of approval and only required that the application be filed before a certain date. In any event Disposal Services accepted the invitation of the department and appealed to the Appeal Board, now described as the "Environmental Appeal Board". Mr. Wesley Williamson, a witness before the Commission and then acting Director of the Waste Management Branch, had his own ideas on how the matter should be handled and after the passage of over a year, on May 11, 1973, he sent a memorandum to the Legal Services Branch reviewing "the status of Disposal Services landfill operation located on part Lot 26, concession 3, town of Vaughan", commenting on the fact that the company was still operating more than a year after the certificate of approval had been refused, that the site (evidently the 43 acres) was approaching full capacity and according to P. S. Isles, an assistant regional engineer, its operation was in plain view of the town of Maple, which was beset by the truck traffic involved and disturbed by blowing paper and lack of sufficient cover material. He continued:

> **"In a recent interview on April 4, 1973, Mr. P. S. Isles could not receive a confirmed answer from the staff of Disposal Services as to where the wastes will go after the completion of the site. It is believed that possible methods of disposal of the wastes collected by their vehicles being considered could be the use of York Sanitation's sites at Aurora and Whitchurch-Stouffville township or the addition of another layer on top of the already extended height of land which is presently being used by Disposal Services. In addition, Mr. P. S. Isles, in a conversation with Mr. Alf Train of Disposal Services on April 25, 1973 learned that the intent of Disposal Services may be to extend their existing site onto their adjoining property, which again has not been issued a certificate of approval."**

The author then made the following ingenious suggestions:

> **"With this in mind, the Waste Management Branch would like to undertake the following steps. That a hearing of the Environmental Appeal Board not**

be held, and that instead a certificate of approval be issued to Disposal Services Limited under the auspices of The Environmental Protection Act, 1971, as revised in August 1972. Under this recent revision a certificate may be issued without verification of the local by-law non contravention statement. This certificate would be issued based on preventing the landfill operation from taking wastes after August 31, 1973. If the aforementioned is approved by the Legal Services Branch, a certificate of approval would be issued immediately for implementing a site closure by August 31, 1973. If a hearing is required by the Environmental Appeal Board, then one of two alternatives is available. If a hearing is held, and the Appeal Board grants issuance, a certificate would be given with the condition of closure. The other alternative, if the Board refuses Disposal Services' appeal, is to issue a control order for a site closure at whatever time the site is filled to capacity.

It is requested that the Legal Services Branch investigate the validity of bypassing the Environmental Appeal Board Hearing and proceed under The Environmental Protection Act, 1972. This would expedite the issuance of a certificate and, as such, the closure of this site. Your comments would be appreciated as soon as possible."

The Legal Services Branch evidently saw its way and on June 20, 1973, Williamson issued a certificate for "part of Lot 26, Concession 3, town of Vaughan, subject to the following conditions:

1. **That no waste shall be accepted at the site after August 31st, 1973, and the site shall no longer be used for the disposal of waste.**
2. **That prior to August 31st, 1973, the holder of this certificate submit to the Regional Engineer a detailed proposal outlining the closing off procedures to be employed at the site."**

The provisional certificate, thus qualified, was stated to expire on September 30, 1973, and it was accompanied by a notice explaining that the conditions had been imposed because "at the current rate of use the site will have reached its full capacity for operation as a waste disposal site by August 31, 1973", and "in order to prevent harm or material discomfort to any person and for the conservation of the natural environment". This was followed by yet another invitation to appeal to the Environmental Appeal Board, which Disposal Services promptly accepted.

There is no question that the spectacle of a company operating without a certificate and apparently in the face of a refusal to grant one was unfavourably viewed in Maple, and particularly by the council of the town of Vaughan. It was not seriously suggested that Disposal Services was proceeding unlawfully, particularly since it had been engaged on the 43-acre site at least for a decade, had previously been in good standing under the legislation which prevailed before *The Environmental Protection Act, 1971,* and believed on grounds which the Department evidently accepted that, having filed an appeal, they could proceed in spite of Section 30 of that Act, which is as follows:

"30. No waste management system that is in operation or waste disposal site that is in use when this Act comes into force shall be operated or used,

(a) after a certificate of approval has been refused; or

(b) where a certificate of approval or provisional certificate of approval has been issued, except in accordance with the terms and conditions of such certificate."

Thus, in spite of Mr. Williamson's efforts to simplify the situation, Disposal Services Limited got its hearing before the Environmental Appeal Board.

The Board was presided over by its chairman, Mr. J. W. Pasternak, Q.C., and the appellant, the Ministry of the Environment, the town of Vaughan, and the Maple Ratepayers' Association all appeared, the appellant being represented by Mr. M. H. Chusid, who contended that the application in appeal embraced the whole 96 acres shown shaded on Appendix F. It is not irrelevant to say that Chusid had sat with Norman Goodhead on the council of the township of North York and had been a candidate for the New Democratic Party in a provincial election, nor is it said in any way in derogation of his abilities as a lawyer, and it will be seen that his adroitness and tenacity on the occasion of these appearances served his clients well. The Commission was furnished with a transcript of part of the proceedings before the Board on November 8, 1973, whereat the Chairman pronounced that the application in appeal could not refer to other than the 43-acre site, that any application in respect of the 20-acre site must be brought under Section 33a of *The Environmental Protection Act, 1971,* and that pursuant to Mr. Chusid's undertaking Disposal Services was to vacate the 43-acre site by December 15 of that year, thus effecting an extension of time in respect of Williamson's provisional certificate of approval. On the heels of these proceedings the town of Vaughan proclaimed on November 19, its by-law 155-73 which prohibited the use of the 20-acre site "for the dumping or disposing of garbage, refuse or domestic or industrial waste", and provided a penalty of $1,000 for each conviction. Three days later Disposal Services applied for a certificate of approval for the 20-acre site and Mr. Chusid wrote to the then Minister of the Environment the Honourable James A. C. Auld, asking that this by-law be referred to the Environmental Hearing Board under the provisions of the new section 35 of *The Environmental Protection Act, 1971,* as amended by 1972, c. 106. Not to be outdone in resourcefulness by the town of Vaughan, Mr. Chusid lodged an appeal in the County Court following the decision of the Environmental Appeal Board as to the identity of the lands which were subject to those proceedings on December 7. In the same month, specifically on December 28, Mr. Williamson, still acting Director of the

Waste Management Branch, memorialized the Minister setting out the distinction between the 43-acre and the 20-acre sites and recommending against a reference of the Vaughan by-law to the Environmental Hearing Board. As to the by-law itself, he said:

> **"It is my belief that because of citizen opposition to the continued use of this site, the Council took this step to 'pass the buck' to you."**

He concluded:

> **"In view of all the circumstances, I consider it would be undesirable for you to become directly involved by instructing the Hearing Board to consider the by-law, and the draft letter attached for your signature to Mr. Chusid is a refusal to do so."**

On December 31, Mr. Auld wrote to Mr. Chusid in rather less peremptory terms than those suggested, declining his request for a reference on behalf of Disposal Services on the grounds that it was not "necessary in the public interest".

In the meantime December 15 had come and gone, and Disposal Services had not vacated the 43-acre site, and Mayor Williams of Vaughan had its employees evicted from those lands on January 7, 1974. On January 11 he wrote to the Minister giving a careful review of all that had transpired, concluding his letter as follows:

> **"Disposal has a separate application for a certificate on the 20 acre parcel. The date for the public hearing has not been set. Disposal has moved its operations and is dumping garbage on this site. I assume it justifies this by reason of the fact that it has appealed the decision of the Appeal Board to you and to a County Court Judge and it is contending the Provisional Certificate covers the 20 acre site. The town on the basis of its past experiences with Disposal was certain that it would move on to the 20 acre site once it was forced off the other. It therefore, after prior notice to Disposal, passed a by-law under Section 354(1) 116 of The Municipal Act which prohibited the use of the 20 acre parcel for the dumping or disposing of garbage. Disposal appeared before Council. It was subsequently given notice that the by-law had been passed.**
>
> **In spite of the fact the Director has stated that no certificate has been issued for the 20 acre site and in spite of the by-law, Disposal is conducting a full scale disposal operation thereon. This is surely a deliberate flouting of the Environmental Protection Act and of your department.**
>
> **The town will be applying for an injunction to restrain the use of the lands as being contrary to the by-law but our advice is that the action may be adjourned until you dispose of the appeal from Disposal. May I respectfully suggest that it is in the public interest to process the appeal as quickly as possible and that in the meantime, you issue a Stop Order to prevent this unauthorized pollution of the environment."**

There the matter rested until February 7 when the Minister gave formal notice under section 35 of *The Environmental Protection Act, 1971,* to the Environmental Hearing Board of his requirement that it hold a public

hearing as to the effectiveness of the Vaughan by-law and that it be held concurrently with that required by the Executive Director in the case of Disposal Services' application for a certificate for the 20-acre site.

Mr. Pepper naturally inquired of Mr. Auld, now Chairman of the Management Board of the Executive Council (formerly known as the Treasury Board) and still a member of the Cabinet when he testified before the Commission on January 26, 1978, as to this noticeable change of front.

> **"MR. PEPPER: So between November and February you changed your mind about this, and I ask you for an explanation.**
>
> **THE WITNESS: That is correct. There had been a good deal of discussion in the Ministry about this problem, and there was a hearing presently authorized, a hearing by the Environmental Hearing Board, to deal with other aspects of that site. And inasmuch as this was the first test, I guess, of the legislation, and the advice that I received, as I recall, was that if we were not to accede to the request for the hearing on the by-law, which the Ministry could direct, then there might be other steps taken which would in effect delay a decision on the site one way or another.**
> **And just to repeat, since the Board was having a hearing on the technical aspects of the proposal, it seemed sensible to have them hear — have a hearing on the by-law itself.**
>
> **Q. Yes, but — that appeals to me, and I rather wonder, Mr. Auld, why you refused the request in the first place?**
>
> **A. Well, the advice that I got in the first place was not to have a hearing.**
>
> **THE COMMISSIONER: Would that have the effect of allowing the by-law to operate subject to test in the courts?**
>
> **THE WITNESS: I think it would have.**
>
> **THE COMMISSIONER: Yes.**
>
> **THE WITNESS: I would have to ask my counsel again. But at the time the situation was somewhat confused inasmuch as there had been an agreement, as I recall it, between the three parties about the original site, that it could be continued for a period under slightly different operating conditions, something like that, which came about as a result of the previous hearing.**
> **And that arrangement apparently fell apart and things were somewhat confused as to what could be done as far as the additional site and the original site were concerned."**

Mr. Auld said further that he remembered the fact that Mayor Williams' letter had not been answered before he left the Ministry of the Environment on February 25. In cross-examination by Mr. Swaigen he referred again to the difficulties which a previous stop order had raised and the reluctance of the Ministry's legal branch to risk a second rebuff in the courts. He concluded his evidence given in response to Mr. Pepper's question as follows:

"Q. Mr. Auld, I am obliged to ask you what is your relationship with Mr. Norman Goodhead?

A. I have no relationship with him. I don't think that I have met him.

Q. Now this inquiry was commenced because of a $35,000 cheque that was given to the Progressive Conservative Party in July of 1974. Around that time was this donation brought to your attention?

A. I guess the first I knew of it was when I read it in the paper.

Q. And that would be in May of 1977?

A. That is correct.

Q. And nobody had told you that Disposal had made a donation, or was going to make a donation?

A. No.

Q. Now in the decision that you made about the by-law — your change of mind, as I put it — was that a decision made by you on advice given to you by your Department?

A. It was.

Q. And did anybody from Disposal try to interfere with your judgment in these matters by asking you to do that?

A. No. The only connection I guess I had with Disposal was correspondence with their solicitor.

Q. Mr. Chusid?

A. Yes."

The Honourable James A. C. Auld was succeeded as Minister of the Environment by the Honourable William G. Newman, and on March 14, 1974, ten days after he had drafted a reply to Mayor Williams' letter, which was not sent, saying that he had been advised not to issue a stop order against Disposal Services, he had to endure some spirited if inaccurate questioning in the Legislative Assembly in which it was openly suggested by the leader of the New Democratic Party that the Minister might have something against "Vaughan Township" or some connection with Disposal Services, although the tone of the debate does not suggest that this was seriously meant. In any event the whole question of the Maple Pits and, as we shall see, the activities of York Sanitation Company Limited in the township of Whitchurch-Stouffville was beginning to stir the Ministry of the Environment from top to bottom.

An important witness as to this was Mr. Paul S. Isles, an environmental engineer with the Central Region of the Ministry and, consequently, with much front-line exposure to the Canadian subsidiaries of Waste Management Inc. and the whole problem of disposing of Metropolitan Toronto waste. He first inspected the 43-acre site, when he felt there was only two or three months' capacity remaining. At the be-

ginning of his considerable testimony before the Commission he was asked to comment on the authorship and fate of a draft submission said to proceed from the Waste Management Branch and addressed to the Environmental Hearing Board about Disposal Services' application in respect of the 20-acre site. The draft submission had been originally put to Williamson who was not able to identify it, but Isles rather cautiously acknowledged that he was author of part of it, and expressed the view that it had never been put in final form or submitted to the Board because at that time it was not the policy of the Ministry to make representations at public hearings. The submission commented severely on Disposal Services' record at the 43-acre site from 1952 to 1974 and doubted the need for development of the 20-acre site, referring to other land-fill sites which might accept the material. "This (twenty) acre proposal is then", it said, "only a stopgap measure by Disposal Services to serve their own interest". Particularly annoying had been the fact that the company had already dumped on one corner of the 20-acre site without leave or licence. Most of all the draft submission emphasized the concern of residents of the town of Vaughan, and even though it went on to marshal all the technical arguments against developing the site on the assumption that Disposal Services would proceed as they had in the case of the 43-acre site, it was clearly public reaction which had stirred the Waste Management Branch and was to cause increasingly difficult conditions to be imposed upon the 20-acre site with a result we shall observe. Mr. Isles' best recollection of when this submission was prepared was some time — not too long — before April 1, 1974, when the Ministry was reorganized and the Waste Management Branch disappeared. A date in March was considered probable.

I return for a moment to Mayor Williams' letter of January 11, which the new Minister, the Honourable W. G. Newman, replied to on March 22. After such a long period of reflection it might be expected that its terms would have been decisive and they were:

> **"Your letter of January 11, 1974 to The Honourable James Auld has been brought to my attention.**
> **In the statement made in the Legislature on March 14th, I indicated that we would be taking the necessary legal action within two or three days to stop the dumping on the 20-acre site. We then made the necessary arrangements for the issuance of a Stop Order which was to have been proceeded with on March 18th. I believe that you are familiar with the recent developments and in the light of our intended action, Disposal Services Limited ceased dumping on the site on March 15th."**

The cessation of dumping by Disposal Services on the 20-acre site had important consequences in the town of Whitchurch-Stouffville, as will be seen. Nevertheless, it is clear that Disposal Services took the same high

view of their right to dump on a site for which no certificate of approval had been issued until the date mentioned, March 15, when Mr. Chusid had publicly undertaken before the Environmental Hearing Board that his client would cease dumping and referred to his client's concern at the critical position in which he felt the Minister had been placed in the exchange in the Legislature to which I have referred above. He also referred to a meeting he had had with the Minister, and its result, and from here on, I think, Mr. Chusid should be allowed to speak for himself, as he spoke to the Board on that day:

> **"In my meeting with the Minister or, rather, I should say that I called the Minister's office and he was kind enough to meet with me, and he had several members of his staff there this morning in order to see if the matter could be resolved. The proposition we put to him was this: We are prepared to stop immediately all dumping on the 20-acre site. We are prepared to abandon our appeals, which gives us the right to continue the dumping, provided that three things are done.**
>
> **One, that this Board is able to undertake that it will render its recommendation, whatever that may be, as quickly as possible to the Minister.**
>
> **We are prepared to assume that that will happen in any event, but we felt that we had to at least make the point.**
>
> **Secondly, that the Minister will do everything he can in order to bring down as quickly as he could, a decision as to whether or not a certificate would be granted.**
>
> **I want to make it absolutely clear that it is in no way part of any condition that we be granted a certificate. That is a completely discretionary matter and all we are asking for is some speed in the matter and nothing else.**
>
> **Finally, in view of the fact that Disposal has this garbage, and the evidence has been put in as to the amounts and so on, it must dispose of it somewhere, that while Disposal is prepared for that period of time to put some of that garbage into other sites, well, we would remind the Board that the evidence has already been given that that is an expensive matter for it, that it be permitted by the town of Vaughan to put some of the garbage it is now putting on its 20-acre site into the town, into the Vaughan town site, not all of it, some of it.**
>
> **Our rationale for that is that the Vaughan site already accepts garbage from a great many disposal companies and this would be one other, and it would be for a short period, because presumably the Minister will bring down his decision on this matter as quickly as possible.**
>
> **There would also be the period of time that it would take, if a certificate is granted, for Disposal to prepare the site in accordance with whatever conditions there are in the certificate, and it would not do any dumping while these preparations are being attended to.**
>
> **As a result, if a decision can be reached, and I am throwing out a figure here, in let us say a month's time, and it takes another month for the site to be prepared, assuming that the decision is to grant the certificate, then there would be no dumping on that site for a period of two months, and afterwards, the dumping would have to take place, of course, completely within the terms of the certificate.**
>
> **If, on the other hand, at the end of the month (if that is the period) the**

decision is that no certificate will be granted, of course, that is the end of our dumping on the 20-acre site, period, because that is the decision made under the Act."

He went on to say that everything depended on a prompt decision by the Board and the Minister. And reasonably prompt it was, because after Disposal Services' appeal to the County Court had been dismissed on consent on April 29, the Board recommended approval of the application for the 20-acre site subject to unusually stringent conditions, and at the same time advised the Minister that the town of Vaughan's by-law prohibiting it should not be allowed to apply. On May 22 Mr. Newman advised the clerk of the town of Vaughan of this recommendation and also forwarded a copy of Mr. Caplice's letter to Disposal Services about the Board's recommendation. The Minister said he would reserve his decision as to the by-law until he was satisfied, "that the final plans and specifications are acceptable for the issuing of an approval certificate", and he concluded, rather oddly when one considers that the two were incompatible; "If indeed a certificate of approval can be issued, I will be prepared to consider the matter of the by-law further at that time".

Of course, as has been seen, the recommendations of the Environmental Hearing Board were not binding upon either the Minister, in respect of the by-law, or the Director of the Environmental Approvals Branch, with respect to the issuing of a certificate, and neither one of them was yet committed, the Director telling the company that he would, "be seeking assurance from you with respect to those matters recommended by the Board prior to granting the approval certificate". That Mr. Caplice was not marching entirely in step with the Minister is revealed by the final paragraph of the letter.

"We will be in further contact with you with regard to discussions on the conditions recommended and are hopeful that we will be able to forward final approval shortly."

Making every allowance for the agreeable flourishes which occasionally appear in the correspondence of functionaries with the public, this expression must have caused considerable despondency in Maple when its contents were viewed side by side with the Minister's letter. In any event after reviewing the report of the Board, Mayor Williams on behalf of himself and his council, wrote a circumstantial reply on May 30, the terms of which indicated that he was not deceived as to the eventual granting of a certificate because he commented in detail on the Board's recommendation. He also said this:

"In the event that you decide to issue a Certificate of Approval I respectfully request that the form of the appurtenant conditions be submitted to us for comment before the certificate is issued."

One of the town councillors, Dr. James M. Cameron, who wrote to the Minister on June 3 was not so resigned about the inevitable issue of a certificate and assumed that it would be granted, describing the conditions suggested by the Board as, "a not so subtle whitewash of a clearly unacceptable and unsuitable site and application", to which Mr. Newman replied, "you are likely aware that I agreed earlier to forward to council the draft certificate of approval including any conditions for its review prior to issuing should we decide that approval could be granted."

Meanwhile, the Central Region and the Environmental Approvals Branch of the Ministry had been hammering out the details of the conditions which were to be annexed to Disposal Services' certificate of approval for the 20-acre site and a letter from the company to Mr. McMurray of the latter section shows that by July 2 agreement had virtually been reached. The fact that on July 24 the $35,000 cheque to Royal Trust account no. 5000 was issued and a week later on July 31 Caplice signed the provisional certificate of approval for landfill located on the west half of Lot 26, concession 3, town of Vaughan, is thus robbed of some of its dramatic interest. Coincidentally the Honourable Mr. Newman issued an order striking down by-law 155-73 of the town of Vaughan, which had been aimed directly and solely at the 20-acre site.

General reaction in Vaughan can be measured by Mayor Williams' denunciation of the proceedings in his letter of August 16 to the Minister. He expressed the extreme disappointment of the council and referred to his letter of May 30 and the Minister's letter of June 10, in which the suggestion of pre-consultation had been made and accepted. He referred to the meeting of Mr. Isles, "of your Ministry", the town administrator, the town engineer, and the town solicitor on July 26, in which it was understood that Isles was to submit the conditions to be attached to the certificate of approval to his superior and at the same time to the town, "for their comments". Council had waited for the opportunity of considering them and had been shocked to receive a copy of the certificate without any further discussion. The mayor commented bitterly on the fact that the certificate described the site as the west half of Lot 26, expressing the view that the proceedings before the Environmental Appeal Board had been ignored. He concluded: "The Council and I feel that this is a most unfortunate ending to this matter, particularly in view of your early commitment to Council." Three days later Dr. Cameron rubbed it in from his point of view and the Minister was left to apologize as best he could to the mayor.

It is now necessary to see what the principal actors had to say about the transaction in the evidence given before the Commission. The Honourable William Gould Newman testified before the Commission on

January 27, 1978, and is now Minister of Agriculture for Ontario; from February 26, 1974 to October 6, 1975, he was Minister of the Environment. This was his first portfolio and he held it at the time when the Disposal Services donation was made. Counsel inquired about his relationship with Norman Goodhead and he said that other than having known him as a Conservative and having met him at some fund-raising dinners for the federal party, he had only discussed the 20-acre site with him and Chusid when Chusid and Goodhead had voluntarily offered to stop the dumping there on March 15. The exchange in the Legislature on March 14 was then gone over, as well as what happened the following day before the Environmental Hearing Board, and Mr. Newman said that he took the same tough stand with Mr. Chusid at the meeting of March 15 as he did in the Legislature on the previous day. Chusid had mentioned the difficulties which would follow ceasing operations on the Teston Sideroad, but referred to the Whitchurch-Stouffville site, otherwise known as the Highway 48 site, as an alternative, and the possibility of the town of Vaughan allowing some dumping for a fee in the usual way on their own property to the east. Then the Minister was asked about his practice in consulting with the Director of the Environmental Approvals Branch, and particularly in connection with the proposed certificate of approval for the 20-acre site, and he agreed that this was occasionally done, either direct or through the Deputy Minister. The issuing of the certificate without further discussion with the town council was described as, "quite obviously an oversight". Mr. Pepper then proceeded to put to the witness the situation which has been developing at Whitchurch-Stouffville, which I shall deal with below, and concluded:

> **"Q. Finally, Mr. Minister, I have to ask you about Exhibit 3, which is the cheque in this matter, the political donation.**
> **July 24th, 1974, was perhaps an important time for Disposal because they had not got their certificate on the 20-acre site at Maple and they had not got their certificate on the site of Whitchurch-Stouffville and were subject to a Control Order. When did you first hear that $35,000 had been given to the Conservative Party?**
>
> **A. When I read about it in the paper before the — during the last election.**
>
> **Q. And around July, 1974, did anybody from Disposal — by which, I mean, particularly Mr. Norman Goodhead, possibly Mr. Solomon or anybody else — indicate to you that a large political donation would be made or had been made?**
>
> **A. Absolutely not."**

As to these questions the witness was not cross-examined.

Mr. Caplice returned to the stand on January 19, 1978, and he was asked by Mr. Pepper about the draft submission as to which Mr. Isles

had also been questioned. He pointed out that the Ministry at that time was undergoing a "major reorganization study", which was implemented on April 1, 1974. This had greatly eased a period of tension accompanying the Ministry's early efforts to bring within its orbit the legislation and agencies dealing with protection of the environment. After April 1 the policy of not making representations to the Environmental Hearing (now Assessment) Board was changed and changed slowly in the opposite direction. He could not say why the Minister had altered his expressed view, but he was frank to say for his own part he had been "one of the fumblers of the ball". He had misunderstood the nature of the meeting that Isles held with the representatives of the town of Vaughan and did not think there was any serious impediment to the issue of a certificate. Finally, he flatly denied that in 1974 he had had any discussions with anybody from Disposal Services, other than Goodhead on the occasion of his only visit to the Maple Pits, that he was subjected to any approaches or pressure in respect of the certificate of approval for the 20-acre site and that he had ever received any gifts or money from anybody with the company during the period. Cross-examined by Mr. Swaigen he said that he saw the Minister regularly in the course of his duties, but that since he issued some 14,000 certificates of approval a year, it was not possible for a minister to consult him personally in any particular case, an answer which seemed to me to lack logic. Mr. Swaigen asked, "Has the Minister in any case ever countermanded your decision on this and substituted his own decision?", and he replied, "No, not that I am aware of." It may be noted here that the terms of *The Environmental Protection Act, 1971,* in this respect would make any such alteration unlawful and there is from the evidence no reason to suppose that in the matters under investigation the Director of the Environmental Appeals Section was either conscious of the applicant Disposal Services being in a preferred position or had been approached to accord it.

No doubt the most experienced of the officials who testified to the Commission was Mr. D. S. Caverly, who joined the Department of Health as a sanitary engineer in 1944, and became in 1963 General Manager of the Ontario Water Resources Commission. After serving in the Ministry of the Environment as Assistant Deputy Minister, Water Management, he became chairman of the Environmental Hearing Board in 1973 and when it was reconstituted as the Environmental Assessment Board, he was appointed chairman of that in 1976. From the very beginning of his experience Mr. Caverly was familiar with the "hearing function" and he was the first hearing officer of the Department of Health, so that he has returned to this work in due season. He testified to the nature and duration of the hearings in the case of the 20-acre site

at Maple and in that of the Whitchurch-Stouffville site, the subject of applications by Disposal Services Limited and York Sanitation Company Limited respectively. A great deal of technical information was given to the Board and the decisions of its members were unanimous. He denied that any member of the Legislative Assembly or of the Ministry of the Environment from the Deputy Minister down had endeavoured to interfere with the judgment of the Board in either of these hearings and said that he knew nothing of any political contribution until he read about it in the *Globe & Mail* years later. Mr. Caverly was cross-examined at length by Mr. Swaigen who offered in evidence a transcript of proceedings before the Board on March 26, 1974, dealing with the 20-acre site, and volume 27 of a transcript of the Board's hearing of the Whitchurch-Stouffville application of York Sanitation Company. The latter had been a source of grievance to the Stouffville ratepayers represented by Mr. Swaigen's client, Preserve Our Water Resources Group. In consequence the examination was prolonged and was heightened by an accompaniment of 90 mile-an-hour winds. Having given this matter considerable attention I recognize that some of the members of the group who testified to the Board were highly sensitive to the forensic style of Mr. Chusid and even felt the very experienced chairman was prejudiced against them. Taking into account the 44-day duration of the hearing at Whitchurch-Stouffville — the longest on record in Mr. Caverly's experience — it is not surprising that some impatience was shown and some expressions used that, upon reflection, might have been re-phrased. I am satisfied, however, that no cases of bias nor prejudice have been made out, as no case for improper influence has been made out, and on this subject I shall comment further in the chapter dealing with the Whitchurch-Stouffville affair.

The protracted evidence of Paul S. Isles deals more fully with that site even than with the situation at Maple and I will consider it further, but it is proper to say here that in neither case was he aware of pressure to sustain an operation which in most respects was long established. Neither Mr. R. J. Hassard, a Toronto lawyer who had purchased property in the wooded area contained in the south west angle of the intersection of Dufferin Street and the projection of the Teston Sideroad, and corresponded with Premier Davis about government policy and the future of the Maple Pits, nor Mayor Garnet A. Williams of Vaughan was prepared to allege that there was any impropriety or improper influence of the kind contemplated by my terms of reference.

CHAPTER VI

York Sanitation Company Limited and Stouffville

It will be recalled that within a month or two of the purchase of Disposal Services Limited by Waste Management Inc., York Sanitation Company Limited was also acquired. At the end of December, 1972, it, in turn, acquired from the R. W. Bremner Company Limited a disposal site lying on the east side of Highway 48 — which at this point runs north and south — being part of Lots 14 and 15, Concession 8, in the township of Whitchurch, now known by the cumbersome name of the town of Whitchurch-Stouffville. The area consisting of 185 acres and operated for 20 years as a dump, is north of the built-up section of the municipality formerly known as Stouffville. The Bremner company had held a provisional certificate under *The Waste Management Act, 1970,* since 1971 and this, as renewed from time to time, prohibited use of the site for liquid industrial waste. After the purchase by York Sanitation a provisional certificate was issued to that company dated July 23 and expiring on September 30, 1973, a period somewhat shorter than its predecessor had enjoyed for the various certificates it had held. A further certificate was issued by the Waste Management Branch (under the old departmental organization) on January 21, 1974, to expire on March 15 of that year and this provided, "that no hauled liquid industrial waste, processed organic waste, or septic tank pumpings be accepted at the site", the reason being, as given in the previous certificate that the acceptance of liquid waste in the past had "resulted in the discharge of contaminants to the ground water in the vicinity of the site". Then on March 29 Inspector M. H. Laengner, of the Central Region of the Ministry, wrote a letter to the file which contained the Bremner-York application history, recording his conversation with York Sanitation's secretary-treasurer Mel McCaffery about the large increase of tonnages deposited on the site in the order of 700 to 800 tons a day. He commented on the fact that McCaffery had attributed the increase in volume to waste received "from the disposal services company". This strange error of the typist or the

author may have concealed from the reader of that day that Disposal Services' shutting down the 20-acre site at Maple was a direct cause, with the closing of the James Sabiston site, of the increase in tonnage which was brought to their sister company's site at Whitchurch-Stouffville. Of course, there was a corresponding increase in traffic which had compelled York Sanitation to acquire extra equipment for spreading and compacting. Hours of operation had been extended to 7:00 a.m. to 5:00 p.m. on week days and 7:00 a.m. to 3:30 p.m. on Saturdays, a matter of two and four hours respectively. The inspector concluded, "However with all these significant changes Mr. McCaffery feels that the York Sanitation Company can cope with the increase of volume to this site." But shortly the residents of Stouffville were to take a hand in the proceedings. The Whitchurch-Stouffville site, being isolated and not being part of a huge complex of sand pits and land-fill, was an easier target for people who had not been conditioned to mining and filling on the grand scale that prevailed at the Maple Pits.

The agitation against the rising scale of activity of York Sanitation Company's operation was skillfully led by Mr. Robert W. Black, a member of the law firm of Mingay & Associates of Markham, who acted for the town of Whitchurch-Stouffville. Between April 18 and May 7 he addressed three circumstantial letters to Paul Isles at the Ministry of the Environment, setting out all the town's complaints against the company's exploitation of the site, and followed them up in July with a letter to the Honourable Robert Welch, who was then Attorney General. In the first letter, after reciting the experience with contamination caused by liquid waste — in the Bremner period, be it said — inadequate screening, and unauthorized enlargement of the site, Black accuses the Ministry of not exercising "its powers to issue control orders, stop orders or to prosecute or even to have rectification orders made". He complains that although the provisional certificate is based on application for a dumping rate of 150 tons per day, this had recently increased to 700 tons a day, and he cited an undertaking by Isles to approach the operator and have a 400 ton daily limit imposed. Black concluded by referring to various telephone conversations with Isles following a meeting of April 9 with the Whitchurch-Stouffville council, and demanded information on tonnage at the site, a public hearing, a stop or control order, and prosecutions. This was an effective letter laying a foundation for future action, as will be seen.

Two more letters confirming the contents of telephone calls followed in quick succession and Mr. Isles was spurred to indite a "status report". In this he reviewed the history of the site of 185 acres over a period of some twenty years, the unfortunate experience with liquid waste, the

fact that York Sanitation after buying the site from Mrs. Bremner was interested only in land-fill for solid waste and the nature of complaints received in the spring of 1973. He finished by referring to the meeting of April 9 with the town council and discussion of their "concern", of the "upgraded" plan for future development which the Ministry had in mind, the sudden uprush in tonnage and contemplation of a control order. This was followed by a further report three days later. He again reviewed the previous events and, particularly, a long-range plan of York Sanitation to deposit 800 tons for a period of eleven years. But here Mr. Isles made specific recommendations:

> **"1. If verified by chemical analysis, information should be laid against York Sanitation for the emission of a contaminant on the east property line, in accordance with Section 14(1).**
> **Prior to information being laid, confirmation from the Ministry of Health and Phytotoxicology that the leachate will cause or is likely to cause injury or damage to any person or plant life.**
> **2. That Provisional Certificate of Approval #230701 be reissued for a period of six (6) months with no conditions. That an Environmental Hearing Board hearing be held for full development of the site.**
> **3. That an order be served on the company to upgrade the daily operation of the site. A draft of the order is attached.**
> **4. Because of the past history of complaints regarding blowing paper and debris, a site inspection should be carried out and if applicable, York Sanitation be prosecuted in accordance with Section 65 for the creation of litter."**

An order was accordingly issued on May 23 signed by P. G. Cockburn, Director of Central Region, described as a "control order" and expressed to be made under section 43 of *The Environmental Protection Act, 1971.* This, in brief, provided for standards of compaction and cover, continual supervision, the removal of leachate from the property of one Bernadette Hill, the erection of preventive berms along the eastern and western boundaries to screen the operation from public view and the installation of fencing for the control of litter. Two more important conditions emerged. The company was ordered to obtain scales for the weighing of incoming vehicles, to keep records of the net weight of each load and "effective immediately" to observe the maximum limit of 300 tons per day.

Early in the following month the Honourable Mr. Newman held a meeting which was attended by Mayor Ratcliffe, members of the council of the town of Whitchurch-Stouffville, and Mr. Black, the solicitor. This took place on June 5, 1974 and Mr. Black wrote the mayor a five-page letter recording what had passed on June 26. He recalled Mr. Newman saying that the Ministry was prepared to prosecute any violation of the control order of May 23, once the time for appeal period had run,

and pointed out that no appeal had been lodged by York Sanitation. It is evident from the letter that the Minister was reluctant, as he had been in the case of Disposal Services, to resort to a stop order and for the same reasons. The representatives of the town had evidently complained that, in spite of the absence of scales, a simple calculation made by the town employees based on the number of trucks indicated that for June 4, "the probable tonnage on that date exceeded 900 tons".

The reluctance of the Ministry to prosecute and Mr. Isles' telephone assurance that he would recommend prosecution if the scales were not installed in the course of a week, or the 300 ton maximum was exceeded, were other matters dealt with in the course of a letter which concluded by suggesting remedies open to the town, one of which was the enforcement of the municipal by-law dealing with the use of land. It may be mentioned now that this by-law permitted the use of the York Sanitation site for disposal but provided conditions which, conceivably, were too elastic, because on October 22, 1974, the town council enacted by-law 74-45, which simply prohibited such a user throughout the whole of the town of Whitchurch-Stouffville. Later on the same day Black wrote another letter to the mayor reporting a telephone conversation with Isles to the effect that York Sanitation had violated the control order having only just put in an order for the stipulated scales. This letter ended with an exhortation to the mayor to approach either Mr. Newman or Mr. Hodgson, who represented York-Scarborough in the Legislature, and, "ask if they would now supply the support they promised".

The question of the scales was vexatious, and York Sanitation was evidently in no hurry. Although it is now clear that at that time a number of operators of disposal sites and sand and gravel pits in the neighbourhood could have provided the use of scales for the modest sum of $1 per load, no real effort was made by the Ministry to encourage resort to them, probably because they expected York Sanitation to procure them in short order. If Isles had conveyed to Black the impression that the scales had just been ordered by the company on June 26, he had been misinformed: they were not, in fact, ordered until October 2 from Aurora Scale Service Limited, after inquiries made in mid-September by Mr. McCaffery of York Sanitation, all as described by Aurora Scale Services' president, E. J. Sheppey, who testified before the Commission on January 26, 1978. The scales were in place and in use at the site on November 6. There is every indication that York Sanitation took advantage of a situation in the Ministry about which considerable evidence was given, but which may be briefly described as a reluctance to prosecute for over-dumping when no ac-

curate load measurements were available. In any event overloading was rife and resulted in two things which fed the resentment of local residents: slipshod operations and heavy traffic along highway 48. Only those who have experienced the roar of dump trucks day and night proceeding to and from a gravel pit or garbage dump can appreciate how disturbing it is, particularly in a community enjoying rural amenities.

On June 14 York Sanitation Company, which had been operating under the control order of May 23, 1974, without the sanction of any certificate since March 15, applied to the Ministry for the re-issue of a certificate of approval for operations at the Whitchurch-Stouffville site on an expanded scale. The total area to be utilized for waste disposal was 140 acres, more or less, and the company wanted to deposit 700 tons daily in 1975 and 1,500 tons in 1985. Hours of operation were to be from 7:30 a.m. to 4:30 p.m. on week days and from 7:30 a.m. to 11:30 a.m. on Saturdays, which may be regarded as a concession to the amenities of the neighbourhood. Here I should record my view, derived from the evidence, that the effect of increased tonnage deposited each day was to make it more difficult to police the operation and to increase the traffic; otherwise the site could take only so much. Whether it were filled in ten years or twenty was of no consequence as long as these two aspects were satisfactory. Clearly they were not; the municipality was up in arms, its solicitors were about to write to the Attorney General asking that the law be enforced against the applicant, and Mr. Isles, still in the front line of the battle against the disturbers of the peace at Whitchurch-Stouffville, had decided to recommend prosecution on July 8, to the extent of one charge to be laid under section 47 of the statute for breach of the control order directing the installation of weigh scales by June 15, and charges under the same section for dumping beyond the permitted maximum of 300 tons per day on each day of infraction. This recommendation went to the Legal Services Branch where it was met with a memorandum by Mrs. Linda McCaffrey, which warned that the Ministry, as to the first ground, "would be in a very weak position as it is clear that the company physically were unable to comply with that date (June 15) due to a six to eight week delivery for scales", and similarly on the second, "because the weights are estimated not measured". Equipped as she was with considerable knowledge of the difficulty of securing convictions from magistrates and judges without overwhelming evidence in the course of her previous employment with the Ministry of Transportation and Communications, she suggested that department be approached to set up portable scales to weigh all trucks entering the site, a sensible suggestion but abortive because of their unavailability. She reacted with spirit to

the threat of Mr. Black to ask the court for *mandamus* to compel the Ministry to prosecute in the following passage:

> **"With respect to the threat of the municipality to institute proceedings to compel us to prosecute this company I can advise you such an application could not succeed. You do have discretion with respect to the timing of any prosecution and there is no reason for you to allow the discretion to be fettered by threats to take legal action which is not well founded. You might wish to point out to the municipality of course, that if they feel that there has been a breach of the Order they are free themselves to institute a prosecution."**

The vigilant Black again took a hand on July 29, sending a registered letter to the Attorney General, the Honourable Robert Welch — with a fine disregard for ministerial sensibilities he spelt it "Welsh" — telling the story of the site and the control order, and saying, "we are given to understand that as of July 17, 1974, no steps to prosecute have been invoked by the Ministry". He finished by charging the Ministry of the Environment with failure to act against violations of its statute when it had promised to do so, and asking that the laws of the province be enforced by the Attorney General. A resolution of Council was enclosed to assist in obtaining an order in lieu of *mandamus.* This letter, unwittingly unfair to the efforts of Mr. Isles and Mrs. McCaffrey, was correctly described by Mr. Pepper as "a perfectly proper letter to write to the Attorney General".

On August 19, Isles was writing to Black giving details of the policing of the site, including the news that he could not provide weight records supplied by the operator because the Ministry's Legal Services Branch considered the information confidential. On August 21 Central Region was advising Black of a forthcoming public hearing before the Environmental Hearing Board in connection with York Sanitation's new application and referring to his letter to the Attorney General in the following terms:

> **"Considering your letter of July 29th to the Honourable Robert Welch, may we indicate that at this point in time the Ministry considers that the Company is, within reason, acting in good faith. As such, it is our belief that the Environmental Protection Act, 1971, is being enforced to control the operational aspects of this particular site, pending the resolution of the formal hearing and approval processes."**

Then, on September 5, R. B. Jackson of the Legal Services Branch of the Ministry provided D. W. Mundell, Q.C., of the Ministry of the Attorney General with a closely considered memorandum evidently in answer to Black's letter to his chief, and I quote three extracts which are significant. After referring to the control order Jackson wrote:

> **"It is Ministry policy not to close down existing sites while applications for**

> **certificates of approval are being considered and in order for this to be done it would be necessary for us to comply with section 78(1) of the Act. Instead of doing this a control order has been issued as an interim measure."**

That section, incidentally, refers to a situation where the Director refuses his approval of an application or suspends or revokes a certificate of approval. Later Mr. Jackson returns to this theme:

> **"It is the function of this Ministry not to close down sites but to try and obtain cooperation in the proper operation of sites and as a result it is Ministry policy to use the administrative structures provided in the Act before resorting to prosecution in most cases."**

The writer offers any further assistance that may be required, refers Mundell to Paul Isles, who, he says:

> **"informs me that the town has been advised that there is nothing preventing it from launching a prosecution if it believes The Environmental Protection Act has been violated, even though it may not be Ministry policy to prosecute in certain circumstances."**

This memorandum which was to provide a basis for the Attorney General's reply to Mr. Black's letter of July 29, settled the matter for a time and it is an important indication of the policy of the Ministry. On September 13 Mr. Caplice sent notice to the Environmental Hearing Board that a public hearing of the York Sanitation Company's application was required.

The hearing began on November 5, 1974, and ended on May 5, 1975, having, as noted above, provided the Board with a record. On this occasion the Ministry made a submission to the Board through the staff of the Central Region and in writing. It was summarized as follows:

> **"The Central Region is in support of the York Sanitation application presently before this Board, subject to the folowing constraints:**
>
> 1. **That provisions are made to satisfy all the concerns outlined in the hydrogeological review. The operation will be confined to the present working area until these concerns are resolved.**
> 2. **That the water quality monitoring programme be initiated by York Sanitation immediately and that the results be submitted to the Ministry not yearly as recommended but as generated by the monitoring programme. In addition, the consultant, on behalf of the Company, should include a summary of the development of the site on a quarterly basis. This summary should include the following:**
>   - **(a) daily tonnages received for that period;**
>   - **(b) daily operation, in accor 'ance with the engineering plan, especially final slopes, cell locations, etc.;**
>   - **(c) comments on any variations in ground water quality and gas monitoring;**
>   - **(d) any discrepancies with respect to following the development plan**

as well as indicating that an area equivalent to one to two months operation has been prepared in advance; and

(e) compliance of items such as construction of berms, fences, planting of trees and seeding.

3. That the operator, York Sanitation Company Limited, demonstrate to the satisfaction of the Central Region staff their capabilities in operating according to a scheduled plan and at increased daily tonnages.

4. Although an immediate need has been demonstrated, it may be in the public's interest for the applicant to appear before this Board at a public hearing within a defined period of time to reaffirm that the need still exists."

As has been seen, on October 22 the town of Whitchurch-Stouffville had enacted its forty-fifth by-law for the year 1974, which had purported to prohibit the use of any part of its land for disposal of waste. The effect of the by-law was postponed until April 1, 1975, and in accordance with the usual practice, Mr. Chusid, now acting for York Sanitation, wrote to the Minister on November 29 asking for the by-law to be referred to the hearing of his client's application by the Environmental Assessment Board. In the meantime Mr. Swaigen had written to the Minister on November 13 advising him that he represented the Preserve Our Water Resources Group of Stouffville before the Board as of November 5, enclosing a petition from 1,439 residents of the town for the immediate closing of the site, and somewhat inconsistently for the enforcement of the control order and even more inconsistently, that the Ontario government should state publicly, "that it will respect the recent by-law of the town of Whitchurch-Stouffville which has as its intention the closing of this land-fill site". Mr. Newman replied on November 19 saying, among other things, "since the purpose of the Hearing Board is to consider such factors and make a recommendation to my Ministry, it would negate the purpose of the Board if I acted on your request at this time". However, he undertook to send a copy of Mr. Swaigen's letter and the petition to the Board. At the same time the Minister, who had received a letter from Paul Mingay, Q.C., Black's senior partner, suggesting that by-law 74-45 be tested in the courts rather than referred to the Board, advised Chusid on December 23 that he was "not prepared at this time to direct the Hearing Board to hold a hearing pursuant to section 35 of the Act", and suggesting that he might like to take action in the courts as Mingay had suggested. He refused, however, to impose the stop order which Mingay had also urged upon him. No doubt the Minister felt that the question of the by-law's validity might well be settled before it came into force, but on January 15, 1975, he was advised that the results of the hearing would not be available by April 1. On April 8 the town council enacted

by-law 75-33, to prevail over any other by-law with which it might be in conflict. It is only necessary to say that this by-law had the same effect as its predecessor and, indeed, would have prevented anybody from disposing of any kind of garbage within the confines of the town if it had been enforced.

After the unusually protracted hearing and the wealth of technical as well as "local reaction" evidence which had been given, the Board worked with dispatch to produce its report to the Director of the Environmental Approvals Branch by October 8, 1975. Its membership, consisting of Messrs. D. S. Caverly (chairman), D. A. Moodie (vice-chairman), J. H. H. Root, and D. C. Morton, was unanimous in approving of the application of York Sanitation Company, subject to a long list of conditions which reflected the new engineering requirements applied in the case of the 20-acre site on the Teston Sideroad in the town of Vaughan. For the purpose of this report it is not necessary to pursue these requirements. Suffice it to say that the reaction of the local groups represented before the Board was hostile. The town of Whitchurch-Stouffville busied itself with the preparation of a report which it called "Commentary on the Report of the Environmental Hearing Board, etc.". This was adopted by the town council and was officially presented to the Ministry on February 4, 1976, at a meeting of the council and representatives of Central Region and the Environmental Approvals Section and attended by the Honourable George A. Kerr who had become Minister. In the meantime Mr. Swaigen, who had written a letter of protest to Mr. Caplice on December 9, 1975, returned to the attack on January 10, 1977. On the letterhead of the Canadian Environmental Law Association he asked the Director to "refuse to accept the recommendation of the Environmental Hearing Board that a Certificate of Approval be issued in regard to the above-named site". He continued with this paragraph:

> **"I would submit that a recommendation so circumscribed and restrictive as this one, hedged by 16 limitations, is no recommendation at all. The Board has implicitly recognized so many of the apparent difficulties in the way of any finding in favour of the Application that, were it not for its bald recommendation, a perusal of its reasons, terms and comments would indicate a finding against the Applicant."**

If, however, approval were to be given, then all of the sixteen conditions suggested by the Board should be imposed and the writer asked that he might be informed of any decision to grant a certificate so that he could make further submissions about these conditions "as they are ambiguous at this time". We may well leave the matter with Mr. Caplice at this point because there was a great exchange of views in the

Ministry and with consultants as well as the municipality affected before he issued his Provisional Certificate of Approval No. A. 230701 on September 2 of the same year. In the meantime I must return to the attempts made by the Ministry to keep York Sanitation Company in line.

An undated report of Mr. Isles recommending prosecution of the company constitutes a return to the charge, apparently in June or July of 1976, halted by the expressed doubts of Mrs. McCaffrey two years before. The report recommended prosecution under section 44 of *The Environmental Protection Act, 1971,* for daily deposits of waste in excess of 300 tons and for the submission of false information contained in the returns which the company had allegedly made. This recommendation was adopted by Central Region in a "status report" directed to the Assistant Deputy Minister on July 13. Side by side with the intention to prosecute is the following under the heading "Approval of Site":

> **"Effort is now directed to an early decision as to the Ministry's position in relationship to approval or non-approval of the site. The decision will in part depend on the revised report for funding and site closure and the satisfactory operation of the site."**

"Funding" referred to the requirement that York Sanitation set aside money to recompense adjoining property owners for damage that might be caused to neighbouring wells. No doubt the issue of the provisional certificate of approval on September 2 created second thoughts because it was not until October 13 that the Central Region again raised the question in a memorandum from A. V. Giffen, District Officer, to G. R. Trewin, Assistant Director, recommending legal action be taken against the company "for violation of the Director's order", which I take to be the control order, elsewhere referred to in the memorandum. No objection was raised by the Legal Services Branch and on December 6 Mr. Isles forwarded to Mrs. McCaffrey information as to breaches of the control order "served June 23, 1974, on the above company". (June 23 is evidently a mistake; it should be May 23, 1974.) At the same time notice was served on December 22 of the revocation of the control order which was now clearly inapplicable in the face of the provisional certificate. Twenty-three charges were accordingly laid in the Provincial Court (Criminal Division) and were all dismissed on January 25, 1977, because counsel for the prosecution failed to appear. A memorandum from Mrs. McCaffrey to one Paul Tovey of March 17 indicates that twelve charges were again laid, the other eleven being statute-barred by effluxion of time, and that an appearance had been made on February 25 with an adjournment to April 22 on which date she would appear to obtain a date for trial. She asked for a date in

June because the holidays of the essential Paul Isles occurred in April. Mr. Tovey, the prosecutions officer, then advised R. E. Stackhouse of York Sanitation Company on March 18 what was afoot, asked for the name of counsel to be retained by the company and the date for trial was eventually settled as June 24, 1977. On that day York Sanitation pleaded guilty and was fined $14,400.

Mr. Lamek, in his argument dealing with the Whitchurch-Stouffville aspect of the evidence, urged me in picturesque language that from the Ides of March of 1974 until this anti-climatic but substantial penalty was imposed, the Ministry seemed to have relaxed its grip on the situation, and it is important to consider briefly the evidence which was given by the principal actors. It will be borne in mind that the Whitchurch-Stouffville site evidently had the support of Central Region from the beginning, subject to conditions imposing environmental engineering of high quality and rigid observance. With respect to the York Sanitation Company application Dennis Caplice was examined by Mr. Lamek who, of necessity, put searching questions to him and elicited the response that he had no consultation with the Environmental Hearing Board as to how the matter should be conducted, or as far as that was concerned with Central Region, the views of which were communicated to the Board as we have seen. Later in the examination he denied with emphasis being aware of any pressure or attempt to influence him in reaching a decision as to York Sanitation Company's certificate of approval. Mr. Lamek's examination finished with production to the witness of a memorandum from J. R. McMurray, Supervisor of the Municipal and Private Approvals Section of Caplice's branch, dated August 9, 1976, which deserves, as indeed counsel thought, extensive quotation. Chronologically this memorandum must be inserted between the Central Region's status report disclosing the intention to prosecute York Sanitation and the granting of a provisional certificate on September 2. According to Caplice, McMurray had taken a leading part in co-operation with Central Region over the ironing out and tidying up of the conditions recommended by the Environmental Hearing Board.

> **"As you are aware our Central Region Office is presently pursuing possible court action against the company for violation of the Regional Director's Order and there appears to be sufficient grounds based on the information ordered from the company to gain a conviction.**
> **At the meetings in Maple last week, Mr. N. Goodhead discussed the matter briefly with me and suggested that the tonnages delivered to the site were consistent with an understanding the company had following a meeting with the Minister some months ago. I was not at the meeting and therefore cannot attest to Mr. Goodhead's comments. As I understand it there appar-**

ently was an appreciation that the wastes now being handled by the company had to go somewhere and with the closing of the Maple site there was few option (sic) **as to the disposal point. This argument makes some sense.**

We seem to be in a rather awkward predicament with respect to the company's actions in misbehaving as it did. As I have pointed out to you we have consistently been questioned in our meeting with Council regarding tonnages and have until this most recent disclosure tried to convince them that all was well based on our knowledge. We never did convince them and rightly so. The unfortunate fact of it all to my mind is the attitudes people form of the Ministry as a result of these circumstances. We are either stupid, irresponsible, liars or in bed with the applicant none of which puts us in a good light. It appears perhaps more correct that we simply were not aware of the tonnages based on the continued record provided by the company which we accepted in good faith. We perhaps at worst were naive but that we will not likely ever prove to anyone this simple failing.

What to do about it from your point of view from a technical standpoint I suppose is nothing and to continue with forming your opinion of the application notwithstanding the problems being faced by our Central Region Office. However, I would think that you would most properly have to consider the mismanagement aspects of the current situation in rendering any decision for continuance. One of the major complaints against the site has been operation.

I would think it perhaps necessary that some punitive action be taken against the company by the 'Ministry' if we are to gain any respect in the area at all. I would recommend that the company be formally charged by our Regional Office and the company, if it appreciates our predicament at all, will plead guilty. This will establish the Ministry's intention to take a forceful hand in regulating this operation and maybe make any approval to continue a little more acceptable. I appreciate I am somewhat suggesting that approval will be granted and I suppose I have to question the situation alternatively if operations are to be suspended while the waste being generated has now perhaps no place to go.

I understand P. Isles will be forwarding the draft certificate within the next couple of days indicating the Central Region's position on the applications. On its receipt, I would appreciate some discussions with you prior to your finalizing the matter."

Looking at this memorandum carefully and bearing in mind, as was said in evidence, that McMurray was sensitive about the reputation of his Ministry, it sets out very fairly the dilemma that beset it and is inconsistent with any impression that might have existed in the mind of the writer that York Sanitation was entitled to ask for favours on political grounds. Mr. Lamek was interested in this discussion of "punitive action" against the company by officers who were not involved in the recommendation or framing of prosecutions, and since Mr. McMurray sent a copy to his immediate junior, to Isles, to the Assistant Deputy Minister, and the Deputy Minister himself, I suggested to the

witness Caplice that he might have resented such publicity being given to McMurray's memorandum, but he answered that he did not think that his subordinate was trying to force his hand. Mr. Swaigen said in opening his cross-examination of Mr. Caplice, "I have never met Mr. McMurray but I like him."

The Honourable William G. Newman ceased to be Minister of the Environment on October 6, 1975, and was succeeded by the Honourable George A. Kerr who had a closer connection with the type of work undertaken by the Ministry than anyone else in the Government since he had first joined it as Minister of Energy and Resources Management in 1969, and had been Minister of the Environment from 1971 to 1973. He was to be Minister again following Newman, from October, 1975, to January 21, 1978, when in the course of this Commission's hearings he left to be Solicitor General. Mr. Newman testified at length before the Commission and mostly about the 20-acre site in the Maple area, and to this evidence I have already referred. Since he left the Ministry, two days before the Environmental Hearing Board's report on the Whitchurch-Stouffville application by York Sanitation Company, his evidence on that subject was appropriately curtailed. He recalled the meeting of June 5, 1974, as described by Mr. R. W. Black's letter to Mayor Ratcliffe and as a result of listening to the complaints of the municipal representatives, he paid an unannounced visit to the site, evidently after hours, because he had to reveal his identity in order to get in. He thought the housekeeping at the site was good. Mr. Newman acknowledged that he had taken a stand similar in its toughness to that of March 15 over Maple, and assured the representatives of Whitchurch-Stouffville that the law would be enforced in the terms of the control order, as he had assured the York County Federation of Agriculture. He held a high opinion of Mrs. McCaffrey as "a very aggressive and good litigant", and he was aware of her opinion that the proposed prosecution was premature. My impression of the evidence was that he agreed with this because he had been advised that the weigh scales had been ordered and were unobtainable, and we know that at the time Central Region shared this opinion. He was aware of the extent of the agitation developing in Whitchurch-Stouffville but in his opinion the York Sanitation site was better kept than 90% of the municipal disposal sites with which he was familiar. Finally there was the application before the Environmental Hearing Board which had not rendered its report when he left the Ministry, in consideration of which he felt justified in delaying the prosecution.

Linda McCaffrey had testified before the evidence of the Honourable Mr. Newman was given and she was examined by Mr. Pepper, in part, as follows:

"Q. Now I come to the point of this Inquiry, and that is that you wrote a memorandum on July 8th, 1974, which is Exhibit 144. I assume that you will have recently read a copy of it?

A. Yes, I did. This is the memorandum I wrote, yes.

Q. Now I am just going to stay here for a moment but speak up so everybody can hear you. May I take it, Mrs. McCaffrey, that the opinion of yours that a prosecution against York Sanitation would fail was your own honest opinion?

A. Yes, it was.

Q. And I am obliged to ask you did anybody put any pressure on you to deliver this opinion in the way you did. Did anybody interfere with your professional abilities?

A. No, no one.

Q. Now the fact is, Mrs. McCaffrey, that your opinion effectively snuffed out a prosecution in 1974, on the evidence before us, and I want to ask you, if I may, first of all about the part of your opinion in which you said that since the tonnages were estimated, the Department would be in a weak position in a prosecution.
And I do understand that opinion, of course, but there is evidence that at the time the estimates were those provided by York Sanitation as opposed to estimates of the Department. Did you know that?

A. Yes, I am sure I did know that.

Q. Did that not make any difference to you?

A. No. I had previous experience with prosecutions on the basis of admissions by companies, and not too long previously I had a prosecution against a company in which the defence was simply to point out that their own estimates were ridiculously inaccurate. Somehow we did scrape through with a conviction in that case, but I was not eager to go into another forum with that kind of evidence again when better evidence, reliable evidence, was readily available.

Q. It did not occur to you that perhaps another judge might consider York Sanitation, having disclosed its own estimates as being over the limit, were, as it were, hoist on their own petard?

A. Well, that is what you would count on to save you. But I wouldn't like to give a very confident prediction of success on that basis, no."

Mr. Pepper then switched to the subject of scales, a portable variety having been suggested, as will be recalled, in the witness's memorandum, and she dealt at length with the subject, relying upon considerable experience in trying to obtain convictions against truckers for overloading and for violating the provisions of *The Public Commercial Vehicles Act*. Here I intervened as follows:

"THE COMMISSIONER: . . . . Am I right in thinking that your experience in the Department of Transport and, subsequently, in Transport and Communications has made you wary of Provincial Court Judges, when it comes to prosecuting truckers of any kind?

THE WITNESS: Well, I think when you are handling any kind of an exotic case where you're tendering experts, giving opinion evidence, that Provincial Judges aren't accustomed to that kind of evidence and you have to be very well prepared if you are going to expect success.

THE COMMISSIONER: They tend to be impatient?

THE WITNESS: Yes, that's right."

In cross-examination by Mr. Brown for the Ministry on the following day, January 26, 1978, Mrs. McCaffrey described in some detail the function of the Legal Services Branch and pointed out that her opinion as to the feasibility of the prosecution was not necessarily final or always accepted. At the conclusion of this evidence she was not otherwise cross-examined.

Mayor Gordon Ratcliffe has been a life-long resident of the township of Whitchurch, later of course the town of Whitchurch-Stouffville, except for the fact that he was born in Markham Township some sixty years ago. He has been mayor of the former municipality since 1973 and a councillor in both the township and the town since 1960. He had watched with alarm the rising daily tonnages which were being deposited on the disposal site and had been of the opinion that 150 tons per day were sufficient, rather than the 300 tons prescribed by the control order. He referred to the Minister's public announcement at a meeting in Vandorf that the control order would be strictly enforced; this was the meeting of June 5, 1974. The mayor himself lives on Highway 48 and was astounded at the number of trucks which began to use that road in the spring and summer of 1974. He spoke of the determination of council to do everything in its power to stop further dumping at the site and particularly by the use of its by-laws. He was not, in fact, aware that on June 14, 1974, York Sanitation Company had applied for a certificate of approval, and did not seem to be aware of it until the Board's hearings began. Mr. Lamek then asked him about the commentary on the Board's report adopted by council which he said had been written by Mr. Mingay, their solicitor, and the following passage was put to him:

"The glibness of the Board's recommendation and conditions in the light of such evidence leaves little room for confidence in the Board's findings and recommendation and past history and conduct of the Ministry and enforcement vitiates it."

The witness said that this expressed the alarm and disappointment of council and particularly the Board's disposition to ignore the evidence of two experts called by the town, who had advised that the site should be "capped and closed down". Mr. Lamek's questions concluded as follows:

"Q. Other than that, Mr. Mayor, I have to ask you this: from the tone of the correspondence and what you have told me about your reaction to the Hearing Board's report you appear to have been frustrated and disappointed, but I have to ask you, Mr. Mayor, other than those things do you have any evidence that the reaction of the Ministry to the complaints and requests of the Town, or the report of the Board, or the action of the Ministry in response to the report of the Board, was in any way connected with any impropriety, undue influence, or anything of that sort?

A. No, I have no evidence of that. I just felt that they were lax. But I have no evidence of any impropriety."

As an indication of Mayor Ratcliffe's fairmindedness, matching that of Mayor Williams of the town of Vaughan, I quote the following exchange between myself and the former at the hearing:

"THE COMMISSIONER: Mr. Mayor, did you say that you felt it was a one-way street — the decision of the Board was a one-way street? If the Board had decided in your favour, in the favour of what was urged upon it by your advisers, the site would have been closed; isn't that right?

THE WITNESS: Yes.

THE COMMISSIONER: It would have been a one-street (sic) **in the other direction. Is there any way in which they should have compromised further than they did, considering all the conditions that were imposed upon the operator?**

THE WITNESS: Well, sir, I believe that the north part of this site is not suitable for a landfill operation. It slopes towards the start of the Holland River and personally I don't think there should be any dumping on that. I suppose what should have happened would have been that there could have been limited dumping took place; the site should have been capped and the dumping stopped over a period of two or three years. But with this immense quantity of garbage to go in there, I think it poses a real risk.

THE COMMISSIONER: Oh, I appreciate that. I am merely suggesting that the Board had to decide one way or the other.

THE WITNESS: Yes, I guess in fairness it is a one-way street, as you suggest, either way they decide. But I have to look at my side of the story."

Mr. Swaigen introduced a letter of September 14 to the clerk-treasurer of Whitchurch-Stouffville from the Central Region signed by Mr. Trewin, the Assistant Director, referring to the issue of York Sanitation's provisional certificate of approval on September 2, and making the following apology:

"It has been brought to my attention that Central Region and Environmental Approvals staff had anticipated meeting with your Council prior to the formal issuance of the certificate to explain the conditions to be imposed and that such a meeting was not held. I apologize for this oversight; however I have directed Mr. Isles to arrange to meet to explain any questions Council may have regarding the conditions and the certificate. It is

expected that by the time of the meeting the final form of the funding arrangements should be available so that the information provided to you will be complete."

Mr. Lamek put questions in reply and the mayor acknowledged the fact that the meeting referred to with Isles had been held and that Isles had answered questions, but had not indicated any change of mind as to the sufficiency of the provisional certificate.

Although the Honourable Mr. Kerr had resumed the Environment portfolio only two days before the Environmental Hearing Board reported in favour of the York Sanitation Company application, it was on his shoulders that the weight of the protest ultimately fell. He had been familiar with the problems that Mrs. Bremner had with the same disposal site in 1970 and 1971 and he had visited it at that time. He had, he said, answered one or two questions upon returning to the Ministry put to him in the Legislature in 1975, but it was in June of 1976 at a meeting with members of the town council and Ministry officials arranged by William Hodgson, M.P.P. that he got to grips with the continuing concern of local people about the operation of the site. This was at the time, of course, when Isles of Central Region was reopening the question of prosecution. The Minister had no recollection of any discussions with the Director of the Environmental Approvals Branch. He was asked by Mr. Lamek if he knew Norman Goodhead and said he did. The examination continued:

"Q. In what connection do you know him?

A. I had a meeting with Mr. Goodhead in February of 1976, at which time we discussed the Maple site.

Q. What did you understand was the capacity in which Mr. Goodhead was discussing that with you?

A. Well, I knew Mr. Goodhead as the head of — or the President, I'm not sure what position he had — of Superior Sand and Gravel.

Q. Yes.

A. And they were interested in developing the pits and having a landfill site there."

This, of course, refers to the application of Superior Sand, Gravel and Supplies of August 16, 1973 to use 385 acres of the Maple Pits in the town of Vaughan for other than liquid waste to the tune of 8,000 tons per day, which in many respects has overshadowed the situations which we have examined in detail and has caused concern among people like Mr. R. J. Hassard, not only as to the size of the operation but its monopolistic nature, taking into account the ubiquity of Norman Goodhead and the contractual connections of Superior with Waste Manage-

ment Inc. and Crawford Allied Industries. Since the decision on this application is still reserved, it has not fallen to be investigated as have those of Disposal Services and York Sanitation Company.

Mr. Kerr described his second meeting with the Whitchurch-Stouffville council in October, 1976, just after the granting of the certificate to York Sanitation which he described as much more amicable, but still showed local concern about contamination, the volume of dumping and the fund for compensating people whose wells might be fouled by leachate. These, he felt, were valid points and the company was charged. He had played no part in any consultations about the nature and issue of the provisional certificate of approval to York Sanitation. In conclusion, and as in the case of all witnesses who might have been vulnerable, counsel proceeded as follows:

> **"Q. Mr. Kerr, one final matter that I have to put to you. You are aware, of course, that this Commission is here because of disclosure in the press in May of 1977 of a donation of some $35,000 made to the Party of which you are a member in 1974.**
> **When did you, sir, become aware of that donation as having been made?**
>
> **A. That was last spring — last May, I believe it was, during the Provincial Election campaign, about the time that it was in the newspapers.**
>
> **Q. You say 'about the time'?**
>
> **A. Well, I was called — I had a call from an official of my Ministry that there was a gentleman from the Wall Street Journal who wanted to speak to me about a donation that was made by a company in the States to my Ministry in 1974.**
> **And I attempted to get a little more information from that official, what it was all about. And he didn't really know about it. He just said 'It is a phone call to you, to your office here in Toronto, and the gentleman will be calling you.' And he explained that he had given my number, Burlington number; and I was trying to campaign at that point.**
> **But that was the first time I had heard about it. And then I read about it in the Globe and Mail I think a matter of the next day or so."**

In cross-examination by Mr. Swaigen he said that Mr. Goodhead's reputation as a municipal politician was known to him but he was not aware of any continuous activity on his part as a member of the Progressive Conservative Party.

I have dealt at some length with the dealings of these two subsidiaries of Waste Management Inc. with the Ministry of the Environment of the Province of Ontario. The full story of the influence of the events described upon the latter cannot be told until the four and a half year old application of Superior Sand, Gravel and Supplies Limited, seeking to fill the huge gravel pits in the town of Vaughan, is decided upon. The question may well be asked, in view of York Sanitation

Company's 90-acre site in West Gwillimbury township, 38-acre site in East Gwillimbury township, and 88-acre site near Aurora, why Whitchurch-Stouffville, a site with an unfortunate history, should have been selected to take the vastly increased traffic of 1974 and onwards.

The answer is simple and seems to have convinced the Ministry, at least according to the evidence of Mr. Isles; a significant factor in the cost of collecting and depositing industrial waste, as indeed in mining sand and gravel is the cost per mile of trucking. Since the contract with the producers of waste had been drawn based upon the mileage between Metropolitan Toronto and the Maple Pits on the one hand, and Metropolitan Toronto and the Whitchurch-Stouffville site on highway 48 on the other, the contracting companies would be faced with loss if they had to resort to more distant land-fill sites, a condition which the Ministry was apparently unwilling to impose upon them. No doubt as I have said, the officers of the Ministry and the ministers themselves who were involved with this situation over the years had been feeling their way with a policy designed to control rather than destroy a business essential to the comfort and welfare of the municipality of Metropolitan Toronto, as well as its satellite communities. If it appears glaringly inconsistent for a department of government entrusted with "environmental protection" to be fashioning certificates of approval of operations with one hand for operators they are planning to prosecute with the other, this Ministry, none the less, was consistent in its inconsistency and shouldered the burden of obloquy which it produced. I should say that all of the questions with which Mr. Swaigen and his clients were concerned were investigated by the Commission staff, as were the situations at the West and East Gwillimbury and Aurora sites, and no relevant evidence was unearthed, much less any of impropriety or wrongdoing. So it is over the whole landscape thus far; nor have I found any examples of misconduct about which notice should be given under the provisions of section 5(2) of *The Public Inquiries Act, 1971*. I say this deliberately although Mr. Swaigen suggested to me there was impropriety arising from the failure of the Ministry to prosecute in the face of clear violations, for instance, of its control order, and later of its provisional certificate of approval. But however this conduct may be described, I have found no link between Disposal Services' $35,000 contribution and the conduct of officers of the Ministry and its political heads. Accordingly, I turn now to the other side of the coin to make a similar analysis of the actions of those who dealt with the cheque as donors and donees.

CHAPTER VII

The $35,000 Cheque: The Donor

The story of the $35,000 cheque made payable to Royal Trust Company trust account no. 5000 dated July 24, 1974, may well begin with the evidence of Phineas Schwartz, who, as earlier described, was at the time of its execution a partner in the Toronto law firm of Goodman & Goodman, and testified before the Commission on January 16, 1978, the first day of public hearings after the decision of the Divisional Court had been handed down on November 9, 1977. Mr. Schwartz was the partner in charge of the work of Disposal Services Limited and its subsidiary companies, and the Canadian ramifications of its parent company Waste Management Inc. of Oak Brook, Illinois, and the private affairs of Norman Goodhead. He testified that he was consulted by an officer of Disposal Services whose name he did not recall as to how the cheque should be made out. He satisfied himself that the Royal Trust Company trust account in question was the proper payee and "guessed" that this conclusion was reached by having his secretary call the offices of the Progressive Conservative Party. He said further that he could remember Mr. Goodhead consulting him as to "whether or not it was proper and legal for Disposal Services to make this intended contribution". Much later on May 6, 1975, he confirmed his opinion to Waste Management Inc. by letter directed to the attention of Peter H. Huizenga, that company's secretary; in it he mentioned the consultation with Goodhead and wrote:

> **"This payment, when made was entirely in conformity with the laws of Ontario and of Canada. There has been legislation passed in the last few months at both the federal and provincial level allowing for certain tax deductions at a federal level and maximum limits to donations at a provincial level. However this legislation was many months subsequent to the donation and not in any way relevant."**

He was then asked by Mr. Pepper if he had any record of receiving the cheque in question in his office, and answered, "I have no record whatsoever", and added that it was possible that it could have been

delivered and equally possible that it was not. But he had no recollection of seeing the original cheque. After being reminded of a statement he made to Detective Inspector Macleod about the reason for the cheque being sent to him rather than direct to party headquarters, he said, "My belief is that a messenger brought it down and went on his way with it and that I looked at the cheque to see that it was properly made out". Mr. Brown, appearing for the Ministry, asked, "All I'm asking you is that when you knew what the amount was and you knew who was making the contribution, did you at any time thereafter advise somebody as to the fact that Disposal had just made or was about to make a $35,000 donation to the Conservative Party?" The witness answered, "No." To Mr. Swaigen he said that, although he had some common investments with Mr. Goodhead, he did not advise him or Disposal Services about the application for any land-fill site in Maple. Finally, to my suggestion that he probably telephoned the headquarters of the Progressive Conservative Party and asked how the cheque should be made out, he agreed that this was a reasonable assumption.

On the following day evidence was given by Norman Goodhead as to the cheque, later on in the proceedings by J. W. Pennington, comptroller of Disposal Services, and Max Solomon president of the company at the time, the last two having signed the cheque in question on July 24. Mr. Goodhead, after being taken through the history of the industrial waste disposal projects of his companies and then asked about the $35,000 cheque by Mr. Pepper, electrified his auditors by saying that he had never seen it before, but when Mr. Pepper suggested that he knew something about it, he answered with alacrity and at length and I can do no better than quote his words:

> **"A. Yes, sir, I certainly know as much as there is to know about it. I think I indicated to you that I have been a member of the Conservative Party for some thirty years and a PC-Ontario member, a member of the Businessman's Club and a member of the sustaining membership in Canada of the PC Party. And I have been a Riding delegate, I have been a convention delegate, both for Mr. Robarts and Mr. Davis, and now are voluntary canvasser for funds and a Party promoter. And I have been doing that for quite some time.**
> **We have had discussions, I had discussions with Mr. Kelly on a number of occasions in connection with 1974, what appeared to be an eroding situation in the Provincial Government situation and a —**
>
> **Q. What?**
>
> **A. — tendency towards more NDP socialism, this type of thing.**
>
> **Q. Forgive me, I only interrupt you, sir, so that we can identify people. You had a discussion with Mr. Kelly?**
>
> **A. Yes, sir.**

Q. Mr. what Kelly?

A. William Kelly.

Q. And his position?

A. Treasurer of the Party of Ontario, PC Party of Ontario.

Q. And when are you talking about?

A. Oh, a number of occasions since '73, '74.

Q. All right, go ahead.

A. We could see the problem relating to the NDP and particular matters relating to the socialistic aspects of the economy and so on and we decided it was essential that we make a concerted effort to raise funds.
And as a result of that, I was aware of the fact that Disposal Services were a new company, now owned by Waste Management Incorporated of Chicago, and felt that they could quite properly contribute substantially to the Party, that we considered it to be the party most interested in the people and the business of the Province of Ontario.
We had no use whatsoever for the Liberal Party and as far as we were concerned, they were a group of individuals and not very cohesive in their efforts. We felt the NDP Party was very socialistic and would give away the Province of Ontario. And as a result we convinced our people that the Conservative Party was, in their opinion and in my opinion, acting in our best interests.
And as a result of that, we determined to give a substantial contribution, which was the $35,000. I discussed it with Mr. Phil Schwartz as to the legal situation in respect of such a donation; I discussed with Mr. Kelly the problem of whether or not this type of donation would create any problem insofar as the Party was concerned. I was assured on both counts it would not.

Q. Can I stop you?

A. Certainly.

Q. What do you mean by the last observation, your enquiry of Mr. Kelly about this type of donation?

A. Well, a substantial donation of this type, having in mind we had not contributed to that extent previously.

Q. Why would you think there was a problem?

A. I don't know that anything is a problem, Mr. Pepper, but I like to undertake to check and balance and the checks and balances were necessary, as far as I was concerned, to satisfy Chicago about the problem.

THE COMMISSIONER: With problems like that Mr. Kelly must have been whistling all the way to the Royal Trust.

THE WITNESS: Well, he was smiling, sir, I remember that much.
That is, Mr. Pepper, the situation. I discussed it with Mr. Solomon, who was then the President of the company. I had previously given him the address of where to send the cheque and the name in which the cheque was to be made out to and he agreed, apparently with Mr. Pennington on what-

ever steps they took that this was in order and proceeded to issue the cheque."

John Pennington described how Norman Goodhead and Max Solomon had come into his office after, as they told him, they had agreed between themselves that Disposal Services would make a political contribution of $35,000. One of them — he thought Goodhead but could not be sure — said they had an opinion from Phineas Schwartz that the donation was perfectly proper as were the particulars about the payee of the cheque. Mr. Pennington said that he asked them if "our officers in Oak Brook" were aware of this decision and he was told that they "were cognizant of it, knowledgeable of it". One of his visitors said, according to him, that Lawrence Beck was "cognizant". Lawrence Beck was a senior officer of Waste Management Inc. and in charge of its Canadian operations, as well as being a director and vice-president of Disposal Services Limited. He and two other officers of Waste Management gave evidence to the Commission, as did its general counsel, Mr. J. S. Bergerson. I am indebted to these gentlemen who were not bound by law to testify, and could have ignored the Commission's subpoenas with impunity, for volunteering their evidence and to their counsel before the Commission Mr. J. F. Howard, Q.C., who advised them to do so.

Pennington was concerned about the size of the amount to be contributed, although on being shown by Mr. Pepper the unaudited financial statement of Disposal Services for 1974 and noting the net income of $200,000, its relationship to that figure did not strike him as significant since ample credit was available at the bank. Counsel adduced from the witness evidence about the accounting practice of Waste Management Inc. and its subsidiary companies which I shall refer to again. In any event Pennington tried to get Robert Paul, treasurer and comptroller of Waste Management to whom he normally reported, on the telephone, and succeeded in getting Lawrence Beck, to whom he gave information as to the cheque, its destination and an opinion as to the propriety of the contribution from Schwartz. Beck, he said, "indicated that it had been discussed" and that was the end of the conversation.

Pennington's evidence as to what happened to the cheque after he and Solomon had signed it was not unlike that of Schwartz: it was bewilderingly inexact. I quote from the transcript taken on January 18, 1978. Mr. Pepper is questioning the witness:

"Q. You signed the cheque. Do you remember what you did with the cheque?

A. I'm sorry, sir, I don't.

Q. It is possible that you just gave it to Mr. Solomon, is it?

A. That is possible.

Q. Or to Mr. Goodhead?

A. That is possible.

Q. In searching your files, did you come across any memorandum or letter that would help you, like a letter of transmittal to the trust company or to Mr. Schwartz?

A. Nothing at all, sir.

Q. Mr. —

THE COMMISSIONER: What puzzles us, Mr. Pennington, is that Mr. Schwartz remembers with great clarity that — if you will excuse me —

MR. PEPPER: Yes.

THE COMMISSIONER: — that the cheque was sent down to him, I think?

MR. PEPPER: Not with great clarity, I would say, Mr. Commissioner.

THE COMMISSIONER: Well, he remembered giving an opinion, remembered seeing the cheque and then doesn't remember what happened to the cheque.
Now, here, you remember signing the cheque, you remember the conversation with Mr. Goodhead and Mr. Solomon, the only gap in your recollection is what you did with it.

THE WITNESS: Sir, if I either gave it to Mr. Goodhead or Mr. Solomon or had it inserted in the mail or sent it by Road Runner, I would have no reason to remember those things because cheques — we send cheques every day.

THE COMMISSIONER: I am not really going to make a finding as to whether you have reason to remember it or not, but you have already said in evidence that you have been over and over these things in your mind.

THE WITNESS: Yes, sir.

THE COMMISSIONER: And, evidently, one of the things you have been over is the mystery of what you did with the cheque; is that right?

THE WITNESS: Yes, sir.

THE COMMISSIONER: And it is unresolved; is that the evidence?

THE WITNESS: It was evidently so unremarkable that it wasn't noteworthy."

Evidently and for some reason that is not clear, the memory of Mr. Pennington was affected in much the same way as that of Mr. Schwartz, but if there is a mystery about what became of the cheque, we shall see that it came safely into the hands of Mr. W. M. Kelly, chairman of the PC Ontario Fund. Certainly the evidence of Mr. Max Solomon, who was in a mood to entertain when he testified to the Commission, throws no further light.

I must, however, here deal with a major inconsistency between the evidence of Pennington and that of Lawrence Beck given to the Commission on the following day. I will make more than one allusion to Beck's evidence, but it differed radically from that of Pennington as to what transpired when the latter telephoned him about the donation. Mr. Beck had spent his entire "professional career", as he described it, in the solid waste business and was in charge of the Canadian operations in Ontario and Calgary. His evidence as to what passed between him and Pennington was given after that of Pennington and after Beck had heard what Pennington had to say:

> **"A. I was on the road, and John Pennington called me and awakened me and told me what had happened. And I said 'Fine, John; where are you at?' And he gave me a phone number.**
> **You have to realize I was just awakened. I was in a hotel room. And I called John back in about fifteen minutes after I was able to think it through. And I said 'John, stop the cheque.' And he said 'I can't; it's already gone.' And I said 'Well, then, there isn't much I can do about it.' And that was the extent of it.**
>
> **Q. All right. Why did you come to a decision that the cheque should be stopped?**
>
> **A. Just to give me a little more time to understand it more properly.**
>
> **Q. Did the amount of the cheque disturb you?**
>
> **A. Yes."**

The difficult task of weighing this evidence given by responsible men under oath is one which confronts all judicial officers, and so often that the public should understand from at least one of them that it is seldom the case that believing one witness and disbelieving another, the finder of fact automatically concludes that the witness whose evidence is disbelieved is a perjurer. The tricks of human memory are multitudinous as often demonstrated; frequently witnesses are either at fault in their recollection or have allowed their wishes to impose upon that recollection an inaccurate belief. If, for instance, one witness such as Beck gives a circumstantial account of being wakened by the telephone and calling his interlocutor back with instructions to stop a cheque, one might expect this to have happened as he described it and to treat Mr. Pennington's evidence, omitting all mention of this and saying that all that Beck said was that he was aware that the matter had been discussed, as a fabrication. On the other hand, there are difficulties about accepting in its entirety the evidence of Beck. One would think that "stop the cheque" would probably have meant "stop payment of the cheque"; yet, the answer "the cheque is gone" does not do justice to that interpretation since, as we know, the cheque

was not deposited by Kelly until August 14 and even if it had been negotiated sooner, there was ample time to stop payment, the mere physical passing of a piece of paper being no obstacle. Starting from the position that he had never heard of the cheque or donation until Pennington had telephoned him, he progressed, in reply to questions put by me, to answers indicating that his attitude towards the Goodhead-Solomon management at that time had been to say, "for the time being run the business as you would normally run it". Then in answer to a question by Mr. Howard, he said this:

> **"Q. Mr. Beck, in the discussions you had with Mr. Solomon and Mr. Goodhead in the period of transition you have described, is it possible that Mr. Goodhead might specifically have mentioned the question of political contributions and today you don't remember such a discussion? Is that possible?**
>
> **THE WITNESS: Very possible, yes."**

The reference to Mr. Beck's evidence brings me to its further consideration in conjunction with that of Mr. Robert A. Paul who, as we have seen, was the treasurer of Waste Management Inc. To deal satisfactorily with Mr. Paul's evidence, I should mention at this stage and subject to further particulars in a later chapter, the accounting investigation performed for the Commission by Mr. David Ross, C.A. under the supervision of Mr. John A. Orr, F.C.A., both of the Toronto Office of Touche, Ross & Co., the well-known international firm of chartered accountants. Such an investigation is frequent in all such inquiries as a commission of this kind is called upon to conduct, but was the more appropriate in this case because it was the accounting treatment of the $35,000 donation amongst other items claimed as deferred costs by Waste Management Inc. which led the Securities & Exchange Commission to conduct its investigation of the accounts of Waste Management Inc., particularly in the year 1974. These were earlier the subject of inquiries by the equally well-known international firm of Arthur Andersen & Co., who were auditors of Waste Management. Their Toronto office had examined the statements of Disposal Services and its subsidiary companies, and of York Sanitation Company, themselves subsidiaries of the parent company in Illinois, at its request for the purpose of consolidating their financial statements. Acting on the information provided by the *Wall Street Journal* and the *Globe & Mail,* Mr. Lamek had examined the Securities & Exchange Commission's files on Waste Management Inc. in Washington under the revolutionary provisions of the Freedom of Information Act now in force in that federal jurisdiction. Included in the Touche, Ross & Co. report were the relevant working papers and memoranda passing between the Toronto and Chicago offices of Arthur Ander-

sen & Co. on the subject of deferred costs and, in particular, one compiled by Paul and signed by him and Beck giving the auditors particulars of items capitalized as deferred costs for which there was no explanatory documentation. For instance, the unaudited financial statements of Disposal Services Limited for the year ended December 31, 1974, included a balance sheet showing deferred costs of $219,093.08. An internal memorandum of February 5, 1975, from Arthur Andersen (Toronto) to Arthur Andersen (Chicago) deals with Disposal Services' land-fill costs and refers to the fact that all will be clear when "Bob Paul" provides an extensive memorandum from the Chicago office. Paragraph 11 of this memorandum reads:

> **"Also included in the deferred costs discussed above is an unsupported payment of $35,000 paid to the Royal Trust Company 'In Trust'. We have been advised that this represents a political donation. This matter should be brought to the attention of parent company personnel as it represents an FAR #1 item."**

The last expression is a coded reference to the company's internal policy manual and is of no special significance in this case. A further and more detailed memorandum passed from Toronto to Chicago on January 13, 1975, beginning thus:

> **"During the period from early March until late August 1974, the Company 'voluntarily' shut down its dumping facility in Maple while it was attempting to obtain the necessary permits to operate all or a portion of their land-fill area in Maple. As a result of local community resistance to continued use of the land as a dump and other related pressures, the Company closed the site and used other dump facilities, especially York's Bremner dump. The Company feels that the costs of the shutdown period were voluntarily incurred in order to protect future revenues and thus has elected to capitalize them with the intention of amortizing them in the future. A permit was ultimately obtained for the use of 20 acres, but the Company feels that this virtually guarantees permits on the additional 220 acres available."**

Then after dealing with a variety of items of deferred costs and alluding to "a payment of $35,000 . . . made into a Trust Account and John Pennington did not know the 'beneficiary' of this payment", he wrote the following, amongst other things:

> **"He further indicated that Bob Paul of the parent company was preparing a memo for Arthur Andersen & Co., Chicago on the support for this treatment.**
> **I have posted a** (* but means adjusting journal entry) **for $109,553.52 to charge the operating costs against current year's operations."**
>
> **(* — indicates obscured word)**

Mr. Paul's memorandum — signed Lawrence Beck and Robert A. Paul in that order — duly appeared dated February 3, 1975, and was

designed to provide the 'back-up" documentation which Arthur Andersen & Co. felt was necessary to enable them to express a conventional opinion. Mr. Beck testified that he had signed the memorandum, entitled incidentally, "Keele Valley Landfill", without reading it, so that it must be considered peculiarly the work of Paul. I must be pardoned for quoting it at some length. It describes the Keele Valley Landfill site as "incorporated in the Solid Waste Management System that will be proposed for the Metropolitan-Toronto area", and refers to the study of Marshall, Macklin, Monaghan Ltd., consulting engineers, as a "feasibility study authorized by Superior Sand and Gravel who was also serving Disposal Services Ltd.'s interest". The use of Superior Sand, Gravel and Supplies' name was explained by the fact that Disposal's reputation with the town of Vaughan was not as strong as it should be, as a result of past operating practices". There is no doubt about the scale of the project described with great particularity in this memorandum:

> **"The proposal encompasses using Disposal's and Superior's property in the Keele Valley area as a landfill site for all of Metropolitan-Toronto's solid waste."**

It recited that at the time of the consulting engineer's study Disposal Services had some 244 acres, excluding the 43-acre site which had been donated to Vaughan, of which 116 were available for use as land-fill and Superior Sand, Gravel and Supplies had 440 acres of which 274 could be used. It projected a filling capacity of 50,000,000 tons over 25 years or 2,000,000 tons per year. Mr. Beck proceeds to describe the "right of first refusal" arrangements between Disposal and Superior and then turns to what he calls the "permitting" of the landfill areas which he describes as the "most crucial factor in the whole program". Dealing with the 20-acre site, he refers to it as over-engineered "as a safeguard" because "of the prior experience of Disposal Services in operating a land-fill site. . . ." Then come the crucial words:

> **"In addition to the extensive engineering work, other precautionary steps were taken to insure, to the extent possible, a favourable ruling for permitting the area. Prior to requesting the permitting of the 20 acre site, Disposal had donated approximately 43 acres to the town of Vaughan. Additionally, in early 1974, Disposal decided to close down its landfill at Keele Valley. This was solely a voluntary decision on their part as an investment in goodwill and in an effort to establish stronger relations with the people in the town of Vaughan. The fill site was closed from March through August, 1974. During this period, the equipment and personnel were used in preparing the 20 acres in accordance with the engineering specifications or they were employed at the York Sanitation sites. When used on the York sites, an intercompany charge was made to cover costs. Also, during this period a $35,000 donation was made to a trust fund for political reasons.**

The donation of the land, the Marshall, Macklin, Monaghan feasibility study, the development of the 20 acre site as a "model" site and the political contribution are all part of the program to insure the viability of the Disposal/Superior-transfer/railhaul/landfill project. These are front-end costs and as such are high. This strategy should make future permitting of the additional fill areas easier. . . ."

Two assumptions spring from these pages. First, the head office in Oak Brook had a great deal of information at their disposal presumably provided by their Ontario subsidiary companies, and second, that they expected a tangible advantage from the contribution of $35,000 to the Progressive Conservative Party of Ontario.

Robert Anthony Paul is a Certified Public Accountant (the equivalent of a Chartered Accountant in Canada) and holder of a bachelor's degree in engineering from Yale. In 1974 he was the corporate treasurer of Waste Management Inc. and acting comptroller for the Great Lakes region; in consequence, John Pennington reported to him direct in respect of the financial and accounting activity of Disposal Services Limited. The circumstantial nature of his memorandum was naturally put to this witness and he was asked by Mr. Pepper where he got the information. I quote his reply to some of the other questions and answers so that the flavour of this evidence can be appreciated:

"A. Well, I would be coming up to Canada several times and I would be talking with either John Pennington, or I might be talking to the landfill manager, or I might be talking to other people at Disposal, or I might be talking to Mr. Solomon. I might be looking at the Marshall, Macklin report. I might be looking at our own files in Oak Brook prepared by our Technical Services Group, Mr. Vardy's group.

Q. Maybe I have your job wrong. I know you have this engineering experience, but I thought you were Comptroller, a financial man with the company?

A. That is correct.

Q. And I imagine you are busy. Are you busy down there?

A. On occasion.

Q. Well, you wouldn't be just making general enquiries about things when you were up here, I suggest. I put to you that the memorandum looks as if it was an especially prepared one.

A. It was. It would be prepared at the request of Arthur Andersen.

Q. Yes, but by a man who has done some homework.

A. Well, I think by asking the questions 'How many acres do you have up there?' I was knowledgeable when we acquired Disposal Services that there were approximately three 100 acre sites up there.

Q. Yes?

A. Approximately 100 acres each. I also was aware that we had donated to

the town of Vaughan somewhere between 43, 46 acres. So you come down to plus or minus approximately 244. I probably called up there and said, 'How many acres are left, 244? How many could be filled?'
I can't remember with whom I had those conversations, but you can get that information."

Mr. Paul went on to speculate about the source of his information and mentioned the names of nearly everybody connected with the Canadian companies except Norman Goodhead. Then Mr. Pepper put to him specifically the words, "Also, during this period a $35,000 donation was made to a trust fund for political reasons", and asked him where he was given that information; he replied, "That is my own wording, and in retrospect, it was a poor choice of words. Those are my terms." He gave a similar answer to other questions put to him on these passages and maintained that he did not treat the $35,000 contribution as a licence fee. Then I had some questions of my own:

"THE COMMISSIONER: May I just ask you this question? You used the word 'strategy' and it seems to me to be very appropriate if you did your best — took steps to do your best to comply with the regulations of the Ministry of the Environment in Ontario and generally make this a model site development. Is that right? You were trying to put your best foot forward — or your company was?

THE WITNESS: This is something that we do in all areas.

THE COMMISSIONER: In this particular case you were doing it, were you not?

THE WITNESS: Yes.

THE COMMISSIONER: Yes. And 'strategy' isn't a bad description of it; isn't that right? You wanted to win.

THE WITNESS: We wanted to put best —

THE COMMISSIONER: And you employed strategy to win?

THE WITNESS: We wanted to put our best foot forward.

THE COMMISSIONER: And do you say that the $35,000 contribution was not part of the strategy?

THE WITNESS: There would be no way that I could tell whether or not the 35,000 was part of strategy or not.

THE COMMISSIONER: I think as a Comptroller and a certified public accountant you should have reflected on it. But you say that it has never entered your mind?

THE WITNESS: No. The severity of the implications from the comments never came to my mind. Many people looked at this memorandum before it was signed.

THE COMMISSIONER: But what did occur apparently to the Securities and Exchange Commission is that whatever else this contribution was

$35,000 — a strategic, taxable — it should not have been a deferred cost. Is that right?

THE WITNESS: I believe that is the opinion of the S.E.C."

Mr. Swaigen tried to entangle the witness in a discussion about Form 10K provided for corporations by the Securities and Exchange Commission, in which, among other things, the company described legal proceedings in which it had been involved. Although it was indicated that this Commission was interested in allegations that Waste Management Inc. might be maintaining a secret fund used for political contributions certain of which did not comply with domestic regulations in the United States, it is clear both from the form itself, which was filed in bulk by Mr. Swaigen as exhibit 108, and from the evidence of Mr. Bergerson that the S.E.C. had treated the $35,000 contribution "in a foreign country" on the assumption that it was legal, and only objected to the accounting treatment of this sum by the company as a deferred cost and not as an expense in the year in which it was incurred. Other than to record that Mr. Paul agreed that on reflection he would not have included the contribution in the make-up of deferred costs for the year 1974, there seems to me to be no necessity for dwelling on the subject further except to say that before the introduction of *The Election Finances Reform Act, 1975,* in Ontario and relevant amendments to the Income Tax Acts of both Canada and Ontario, political donations were not an allowable expense for tax purposes and should have been added back to the income of the year in which they were made.

The last document used in the process of reassuring Arthur Andersen & Co. reproduced in the Touche, Ross & Co. report was dated June 11, 1975, sent to the Chicago office and signed by Dean L. Buntrock, chairman of the board of Waste Management Inc., and two members of the audit committee of the board, Arthur W. Glennie and Olin Neill Emmons. The subject alluded to was "transactions during 1974 for which you were unable to find documentation which would normally serve as support for disbursements of the Company", and continued:

> **"These matters have been discussed and reviewed by the Board and we understand additional documentation for these transactions was supplied and reviewed by you. This letter will confirm to you that in the Board's judgment, each of the four disbursements listed were made in the normal course of business and the Board has approved them."**

This, undoubtedly, would be enough for the company's auditors. As for Mr. Buntrock, who testified before me as the last witness before the argument commenced on February 9, 1978, he had no recollection of hearing of the $35,000 contribution before this memorandum to Arthur Andersen & Co. was written. He also denied with emphasis that he had

ever spoken to Max Solomon on the telephone on or about July 24, 1974, to get approval for the writing of the cheque, although he agreed that Mr. Solomon was always calling him about things when he should have been calling Mr. Beck. He put it this way when asked by Mr. Pepper:

> **"Q. Well, did he ever on the telephone to you discuss any political contributions or any charitable donation?**
>
> **A. No. I recall never discussing political contributions with Max at all. And also I don't recall Max ever asking me to do anything. He usually was telling me.**
>
> **Q. Was a $35,000 donation to a political party something that in your opinion Max Solomon should have told you?**
>
> **A. No, but he should have told his superiors.**
>
> **Q. He should have told Beck?**
>
> **A. Yes.**
>
> **Q. Did Mr. Beck relate to you that shortly after the date of this cheque he had received a call from Mr. Pennington and he had thought about the matter and he had telephoned Mr. Pennington and told him to stop the cheque?**
> **Did Mr. Beck ever tell you that?**
>
> **A. No. The first time I read Mr. Beck's deposition, that is the first I had seen it."**

Then the witness told Mr. Pepper, more in sorrow than in anger, that Max Solomon never asked him about anything, he merely told him, and that he had not felt it necessary to "call anyone on the carpet", not Max Solomon, nor Norman Goodhead, nor John Pennington; this was Beck's responsibility and Beck's affair.

Before leaving the evidence given by the officers of the donor companies, I should refer to one other document. At the same time as Buntrock and the members of the audit committee were reassuring their auditors, Donald F. Flynn, senior vice-president and chief financial officer of Waste Management Inc., was writing to a Michael McConihe of the Securities & Exchange Commission in Washington. He had evidently been discussing with Mr. McConihe a number of matters and was enclosing documents about them, evidently the Beck-Paul memorandum and the Phineas Schwartz opinion:

> **"5) A memo dated February 3, 1975, which together with other items sets forth the original reasoning behind capitalization of the $35,000 payment to the Canadian trust.**
> **The accounting for this transaction is not a black and white area. Our information at the time may not have been as complete and accurate as it should have been, but the amount involved is in itself immaterial to the financial statements of the Company. The letter from Goodman & Good-**

man, a copy of which was furnished to you further explains that this contribution is made to a trust fund and further disbursed to political candidates in order to assure anonymity of the donor. As a result of this, it certainly appears no current or future project was affected by the contribution, although normal 'goodwill' is certainly obtained.
These facts were confirmed by me with Mr. Norman Goodhead, District Manager, Canadian Operations. A copy of the cancelled check is being forwarded from Canada and will be supplied shortly."

The author did not testify and Goodhead steadfastly took the position that he had not supplied any of the information upon which the Beck-Paul memorandum or this letter was based, other than to tell Flynn that the money went to a political party in Canada. But if Goodhead had confirmed what Phineas Schwartz had said in his letter, his words would have been unexceptionable. The same cannot be said of the information compiled in the Beck-Paul memorandum and as I have noted, its author mentioned the names of almost everybody except Goodhead as his informants.

CHAPTER VIII

The $35,000 Cheque: The Donee

Donald F. Flynn's observation about "normal goodwill" was not, as I recollect, put specifically to William McDonough Kelly, chairman of the PC Ontario Fund since 1971, when he testified to the Commission, and he would have taken an austere view of that expression. Mr. Kelly testified on January 19, 1978, and was accompanied by Mrs. Helga Paide, his assistant, who also gave evidence. He is a civil engineer and a former senior vice-president of Consumer's Gas Company of Toronto. In addition to managing a number of companies and concerns, he had been throughout the period prescribed by my terms of reference the chief fund raiser of the Progressive Conservative Party of Ontario, reporting only to the party leader. He identified trust account 5000 at the Royal Trust Company, explaining that many contributors had objected to making cheques payable to the party itself, that "5000" happened to be his automobile licence number and had no other significance than being easily remembered by potential contributors, and that Disposal Services' cheque for $35,000 had been deposited in that account. This was a deposit account from which disbursements in the ordinary course were not made, but on his instructions moneys could be transferred to accounts in the chartered banks from which they could be disbursed. Account 5000 was not the only deposit account which he had established at the Royal Trust. He recalled that Norman Goodhead had spoken to him about making a substantial contribution of $35,000 covering a three-year period from 1972 to 1974. This conversation occurred evidently in 1972 at a time when Kelly was conducting a campaign for funds for the Progressive Conservative Party by letters distributed on a very wide scale.

Mr. Kelly's evidence which, if measured by the reaction of press photographers, was considered to be of great public interest at the time it was given, should be quoted on at least three points. First of all, as to the much-discussed destruction of the records which the Commission's investigators were confronted with when they visited the PC Ontario Fund headquarters armed with a search warrant in June of last year, Mr. Pepper put and Mr. Kelly replied to the following questions:

"Q. In Exhibit 100, Mr. Kelly, which is a report of the Commission's accountants, there is reference to a visit to your offices by the staff of the Commission in June of this year and when they asked to see the records, your records of the years in which we are interested here, they were advised that the records had been destroyed; could you tell me about that please?

A. Yes, sir, I think that a more appropriate reference would be the fact that the records were discarded.

Q. All right.

A. When the law changed on contribution limits and limits were imposed, the amounts that had been contributed in earlier years became irrelevant; the names did not, for canvassing beyond 1975 the names were retained right back as far in time as seemed reasonable, but the amounts no longer had any relevance. The new Act imposed a limit of $2,000 in a non-election year and $4,000 in an election year to any one Party.

Q. It occurred to me that perhaps you would have perhaps needed a list of the contributors historically who had given large amounts, so that you could make sure they paid at least $4,000 in an election year. But perhaps you remember that?

A. Sir, I am a fund-raiser for our Party and my pattern, really, in order to keep things quite simple is to ask everyone for the maximum, 2,000 in a non-election year, four in an election year. The people who are canvassed were long-term, most of them, long-term supporters of the Party. I felt that would be likely achievable."

Then Mr. Pepper asked another question of great importance to this inquiry:

"Q. . . . . Have you any way of telling how this particular sum of $35,000 was disbursed?

A. No, I'm afraid not. That thirty-five went into a deposit account along with many other contributions, was melded with those contributions then, as funds were needed for operating accounts, funds were transferred out of those holding accounts into operating accounts.

Q. Would you have any idea of the balance that you might have on hand in this account in July, or should I ask Mrs. Paide about that?

A. I would estimate in the order of a quarter million dollars, but you should ask Mrs. Paide about that."

Again, as to the size of the contribution:

"Q. Could I discuss with you for a moment the amount of the cheque. We here know something that you would not know, which I now tell you, and that is that the net income after taxes of Disposal in 1974 was $200,000 and I, as counsel, am obliged to submit to the Commissioner that, in light of that, $35,000 looms as a very large donation; could I have your opinion of that?

A. Well, yes. I would agree with you. First of all, it was never — it has never been our pattern to relate contributions to net earnings of the poten-

tial contributor on the basis that we think it is, first of all, inappropriate, the distribution of net in a company relies so much on so many things that we have no knowledge of. I always considered it, frankly, a little bit of an impertinence to sort of go to a potential contributor and say 'Can we start by discussing how much you are going to earn this year; let's talk about how much I'd like to have for my Party.' So we have not done that, that information would not normally be available to me, nor would I ask for it.

Secondly, the amount, in my view, when we received it, was a contribution to cover the years 1972, 1973 and 1974. We worked very actively in 1972 to persuade as many as possible contributors to support us on an annual basis up to and including an election year into the fourth year; if possible to contribute directly annually but if not, at least give us a commitment that over that period we can count on having X dollars. And the $35,000 was such a contribution, in my opinion, it covered those years.

Q. Thank you Mr. Kelly, I intend to put before the Commission evidence from a Liberal fund-raiser and that is for Federal purposes, which I know is different, and in an election year their fund-raisers go after corporations to give them one-fifth of one percent of their net income after deductions; have you ever heard of that?

A. Yes, I have.

Q. Would you comment on that, I assume you don't agree with it from what you have just said?

A. I don't agree with it at all, but it's — I don't say that in a derogatory sense, I think that I have great respect for the competence of the Liberal fund-raisers and, on some aspects, even of the Liberal Party. But I think that, again, in my own experience at Consumer's Gas, I was usually the one who was approached by canvassers for political parties and I, the odd time, would be approached on the basis that Consumers' Gas net earnings were such and so and, therefore, we should. . . . And I would usually let the canvasser get about that far and then suggest to him that what I am interested in is what his particular requirements are, what the budget of the Party is and. . . . I would point out to the canvasser that I think he should advise me what his particular needs are, what his overall budget is and what sort of contribution he would like to have my company consider. But not in relation to the net earnings of the company, because he might have no way of knowing what next year's plans for Consumers' Gas Company, for example, might involve. And those plans must include a commitment from this year's earnings. So to me, the two things aren't related. We have not used that formula that we are aware of."

There was, of course, a final point upon which counsel was bound to insist and it was covered in this way:

"Q. Now, I assume you know Mr. Goodhead, he is a well-known Conservative and he's a fund-raiser, you know him personally?

A. Yes, I know him personally.

Q. And I am obliged to ask you, Mr. Kelly, this: at around the time that this cheque was given, did Mr. Goodhead suggest to you in any way who should be the recipients of the $35,000?

A. No, sir. The Conservative Party; beyond that, absolutely not.

Q. Would there be any way of his finding out how it was disbursed?

A. No. I would assume he would be aware it forms part of the funds from which the Party—

Q. Of course.

A. —pays its expenses.

Q. That's his evidence. I'm also obliged to ask you if, as a result of this $35,000 cheque, you informed any members of the Legislature, the Ontario Legislature, that Disposal had made such a donation?

A. No, sir, I did not.

Q. What is your policy with regard to notifying anybody — and I include in there from the Premier down, Cabinet Ministers or members of the Party — of the nature of the donations that you have got?

A. No. The Leader of the Party must be kept advised in aggregate terms of the financial situation, financial condition of the Party. But under no circumstances, including the Leader, is the information of who contributed how much made available.

Q. Now, in the time that you did keep a list, before they were discarded, Mr. Kelly, would such a list or such a record of donors and amounts be in your personal possession?

A. Yes.

Q. Would anybody else see it besides you and Mrs. Paide?

A. I would think not. I would think not, sir.

May I perhaps enlarge that answer just a little because — to explain my hesitation? In canvassing for funds we work with a number of people and you assign a list, canvass lists. Now, it is conceivable that a canvasser who has received a commitment from a contributor, may well tell another canvasser that such and such a company is going to contribute X dollars. But that would be the only way the answer would be other than categorically Mrs. Paide and myself see that list and that's all."

Mr. Brown elaborated on this in cross-examination to make sure the witness was including members of the cabinet among members of the Legislature and was reassured by the witness on that point. Mr. Swaigen cross-examined at some length, putting to the witness a letter of acknowledgement — already filed — from the Honourable Eric Winkler to Mr. Norman Goodhead of October 29, 1975, offering his "sincere gratitude for your support", and acknowledging a "very substantial personal contribution" which Kelly said had not been issued by the PC Ontario Fund. Goodhead himself had said that this contribution was a personal one amounting to $500 to Mr. Winkler's constituency association; he had known Mr. Winkler in municipal politics and had not spoken to him since 1962.

Mrs. Helga Paide, Mr. Kelly's assistant, was born in Estonia and

came to Canada in 1947. She is now chief financial officer of the Progressive Conservative Party of Ontario, an office created by *The Election Expenses Act, 1975*. She was able to give more explicit information about the deposit accounts used by the PC Ontario Fund, saying that at the material time there may have been four with the Royal Trust Company, account 5000 being one of them, from which funds were transferred to the nine operating accounts in the chartered banks. These accounts, in their turn, were concerned with different aspects of the party business such as payroll, organization, administration, youth and so forth and, generally, the system was devised to have the banks do the Fund's bookkeeping. Mrs. Paide did not remember the $35,000 cheque of July 24, 1974, arriving at her office, but she did recall, of course, the later visit by Mr. Ross, Sergeant Okmanas and Corporal Thomson in June, 1977. The observations made by Mr. Ross in the Touche, Ross & Co. report were put to her by Mr. Pepper:

" . . . . And on the first page of the report — Mr. Commissioner — the second paragraph from the bottom, when they asked for the accounting records:

> **'Mrs. Paid replied that the records for the period up to November, 1975 (when limits on political contributions were imposed) had been destroyed prior to the move to Mr. Kelly's new offices.'**

I have read the word 'destroyed' because it is there, Mr. Kelly prefers 'discarded'.

A. Sir, there is an error in this.

Q. That's why I'm asking, go ahead, what is the error?

A. The error is the date. 'Prior to November, '75', it should be February.

Q. Oh, that is at the foot of the page — Mr. Commissioner — where the sentence is:
'Mrs. Paid replied that no records had been retained other than a list of names of donors prior to November, 1975.'
That should be 'prior to February'.

A. Yes.

Q. Were you the person who actually did the destroying or discarding of the records?

A. Yes, sir, I was.

Q. Can you tell me when you did this?

A. It was done over a period of time and, of course, you can — if you want to call it anything specific, you could call it house-cleaning.

Q. Right.

A. The records, the contribution records were important to us up until the time the new legislation came into being. From that point forward, everything but the names became history, and the amounts became completely irrelevant.

Q. Yes.

A. In every office, I think, somebody at some time looks around and decides that the filing cabinets are getting too full, there are just too many papers around.

MR. PEPPER: I've had the experience.

A. "Let's houseclean."

Q. All right. But you really haven't quite answered my question. I'd like to know during what period these records were discarded or destroyed?

A. I would say that — I can't give you a specific date, sir — it was done on a gradual basis, I would say between perhaps March, 1975 and the time that we changed our office location in February, 1977.

Q. So it is over, really, a two-year period?

A. That's right, there was no massive destruction at any time."

Mrs. Paide was not cross-examined.

I had been concerned about two of the expressions in the Touche, Ross report, the first being in the covering letter dated January 13, 1978, written by Mr. Orr:

> **"In respect of our investigation into Progressive Conservative Party donations records, we were unable to carry out any meaningful investigative work as a result of the records of donations received prior to November, 1975 having been destroyed. Only a list of donors' names was retained."**

The second observation occurred in a description of the first visit to party headquarters and then to Mr. Kelly's office by the two Provincial Police officers and Mr. Ross, when Mrs. Paide described how the records of donations received had been destroyed before the new offices were taken over:

> **"We remarked that we would have expected a fund-raising organization to retain detailed records of donations and donors in order to ensure that regular donors were covered in organizing fund-raising activities in subsequent periods."**

When Mr. Ross returned for cross-examination on January 10, 1978, he was being asked questions by Mr. Swaigen as to what "normal accounting practices for keeping or destroying documentation on donations to a political party" would be, which he said he could not comment on, I intervened in the following way:

> **"THE COMMISSIONER: Well, you did comment on it, did you not? You did say you would have expected a fund-raising organization to keep a list. But that raises a question in my mind (if Mr. Swaigen will forgive my intervening) as to why they would keep a list of the amounts when a new statute had been enacted which restricted the amounts payable.**
> **They did keep a list of donors; is that right?**
>
> **THE WITNESS: Yes, they did.**

THE COMMISSIONER: So that am I not right in thinking there would have been little point in keeping a list of amounts when the Legislature has stepped in and said 'In future you can only give so much'? Does that make sense?

THE WITNESS: I'm sorry. Yes, I agree with that statement."

In case it may be said that I was on that occasion disclosing an apparently pre-conceived opinion, I can only plead that nothing in the evidence given on that day by Mr. Ross, Mr. Kelly and Mrs. Paide left any residual concern about the destruction of these records, and I am of the opinion that there was nothing sinister or improper about it. Moreover, I believe Mrs. Paide when she said that the records of 1974 were probably discarded in 1975 and not as a result of the pending inquiry announced in May of 1977.

Commission counsel was careful to call fund-raisers of the other two considerable political parties in Ontario for the purposes of comparison and, particularly, to test the significance of the size of a $35,000 donation. Douglas Colton Matthews appeared before the Commission on January 24 of this year. He had been educated at the University of Toronto, as was Mr. Kelly, and at Harvard and, between 1973 and 1977, had been a fund-raiser for the Liberal Party of Ontario, specializing in the canvassing of corporations. His suggestion to contributors was that a quarter of 1% of the net profit per annum should be divided between the Progressive Conservative and Liberal parties, share and share alike. He did not agree with counsel's suggestion that there was any real distinction between the size of contributions in an election and an off year. Corporations with a net income of under $200,000 were left to canvassers at the riding level. Mr. Matthews evidently operated a less sophisticated system than Mr. Kelly; he was the "volunteer fund-raising chairman", had custody of the deposit accounts and disbursed them at the request of the campaign chairman. Mr. Swaigen, in cross-examination, put to the witness the astonishing proposition that on the basis of the latter's calculations, the company that gave a donation of $35,000 for one year would be expected to have a net annual income of $56,000,000, to which opinion Mr. Matthews deferred on the assumption that if Mr. Swaigen had worked out the figures, he must be right! He declined, however, to say that there was any hard and fast rule or to indicate the size of a company he would expect to give such a contribution. Although it was not put to this or any witness, it is interesting to note that a company with a net income after taxes of $9,000,000 like Waste Management, might have been expected to pay $22,500 for the year of contribution, or $67,500 if the contribution were for three years, as Goodhead maintained and Kelly confirmed.

Mr. Joseph Gordon Arnold Brigden followed Mr. Matthews to give comparative information about fund-raising in the New Democratic Party of which he is the federal treasurer. Between 1970 and 1972 he was provincial secretary in Ontario and the following year undertook a fund-raising campaign to pay off a $100,000 debt for his party. Again, following the 1975 provincial election he had raised $186,000 for the provincial party to eliminate a total of $250,000 in debt. The usefulness of his evidence was circumscribed by the fact that the New Democratic Party as a matter of policy does not solicit contributions from companies; the basis of contribution is the price of individual memberships which, if not proving sufficient, makes campaigning to eliminate debt a necessity. Between a quarter and a third of the party's budget expenditure was contributed by labour unions and the largest single contribution of that kind in Mr. Brigden's experience before the new legislation was passed was $20,000. These figures applied to the province of Ontario, but were similar to those prevailing in federal politics.

Before leaving the fund-raising apparatus of the Progressive Conservative Party of Ontario, a word must be said about the boundaries of the Commission's investigation in this area. Originally counsel planned to investigate disbursements out of the chartered bank accounts into which money had been transferred from Mr. Kelly's Royal Trust deposit accounts, but the evidence of Robert Ridolfo, accountant at the main office of the Royal Trust Company, called by Mr. Pepper to represent the manager with whom the Commission's staff had many discussions before his illness, revealed formidable difficulties and the prospect of negligible results. Mr. Ridolfo first produced a memorandum of the opening of two accounts by Mrs. Paide on December 28, 1971. These accounts were 4901 and 5000 and the memorandum says that it was intended these two accounts would receive money from a number of sources, usually in the form of endorsed cheques for deposit. It continues:

> **"Once a month, money will be transferred from one or other or both of these accounts on instructions to a bank account(s) for payment of various operating and sundry expenditures. The accounts in a savings department will carry no account name although Mr. Kelly's name appears on the signature cards. Our advice as to transfer funds will be given by letter signed by Mr. Kelly or Mrs. Paide. It is not their intention to issue cheques but the occasion could arise and accordingly they have a number of cheque forms to use for making payments from these accounts."**

It went on to say that the trust company had agreed to issue monthly statements rather than to use the passbook system, to provide the owners with cancelled cheques and rubber stamps signifying that deposits were to be made only to the credit of either of the numbered accounts. At this time the accounts held somewhat in excess of $400,000, divided almost

equally between them. Mr. Pepper elicited the fact that no cheques had ever been written. Then the mechanics of transfer on the instructions of Mr. Kelly or Mrs. Paide to the chartered banks was illustrated and it was disclosed that in spite of the agreement not to operate on the passbook system, the trust company had, in fact, kept passbooks, although sending statements as requested to the depositors. But the most significant evidence was the production of a deposit slip dated August 13, 1974.

The deposit slip identifies the account as no. 5000 and describes it as "W. M. Kelly In Trust". The individual cheques number five and are for $2,000, $5,000, $425, $35,000 and $15,000, for a total of $57,425. There is no question that the amount of $35,000 represents Disposal Services' cheque of July 24. Counsel took Mr. Ridolfo through the passbook from April 10 to November 19, 1974, and the deposit dated August 14 of $57,425 duly appears. None of the withdrawals or orders for transfer during that period was identifiable with the $35,000 donation in particular or anywhere amounted to that sum. Those of particular interest, having been made about the time of the deposit, were examined against the letters of instructions in respect of them written by W. M. Kelly to R. S. Traquair, manager of the Toronto branch of the trust company, and giving authority for these to be made to identified current accounts in chartered banks. It was considered, and in my view rightly, that investigation of the chartered banks' ledgers for these accounts to see if any disbursements matched the deposit of August 13-14, would be fruitless and that any general disclosure of the distribution of funds to constituencies and so forth would be unwarranted. The fact was that Disposal Services' contribution was in the PC Ontario Fund as Mr. Kelly said in "a melded form". I believe that statement and it was supported by the deposit slip. An expenditure of time and money on a very considerable scale for an examination of disbursements from the current accounts held by the chartered banks would have advanced the inquiry no further.

I must record in fairness to Mr. Swaigen that his questioning of Mr. Ridolfo indicated that he might have suggested further inquiries. Mr. Swaigen, the only counsel other than Mr. Pepper to examine the witness, did so as follows:

"Q. I am not clear about one thing, sir. Monies were transferred out of the Trust Account 5000 into a number of accounts. Would you tell us whose accounts these were that the monies were transferred into?

A. No. I have given no indication as to where they have gone into.

Q. Can you tell me in whose name current account 6-51414 shown on Exhibit 202 is registered?

A. I can't.

Q. Do you know who—

THE COMMISSIONER: How would he know that? That is in the Toronto Dominion Bank.

MR. SWAIGEN: Well, that is why then. Sorry, Mr. Commissioner.

THE COMMISSIONER: Well, I am just wondering if it's fair to ask this witness.

MR. SWAIGEN: No. I think you are quite right.

MR. PEPPER: We already have evidence anyway, remember, that Mr. Kelly and Mrs. Paide said that they owned nine separate accounts in chartered banks in Toronto and that they transferred money.

THE COMMISSIONER: I assume that. And this is the way they had their bookkeeping done, by getting statements from all these institutions.

MR. SWAIGEN: I wasn't clear about that. Thank you.

THE COMMISSIONER: Yes.

Q. Are there other single deposits shown on the deposit slips during the time April 10th, 1974 to November 19th, 1974, on Exhibit 201, in the same range as of $35,000 or greater?

A. Well, if I may just elaborate on that, and just to point out, I think as the pass book bears, deposits vary in range, and on May 9th there are two items — I should say one item on the 9th, 85,000 totalling; May 16th 54,000 plus odd dollars.

Q. What I need though is the breakdown from the deposit slips, because that would not tell us the individual amounts of the cheques in that deposit, would it?

A. The records can be retrieved, if that is what you mean.

Q. You don't know yourself though?

A. No.

MR. SWAIGEN: Thank you, sir."

CHAPTER IX

The Investigation

The decision not to examine disbursements from the chartered bank accounts of the PC Ontario Fund was just one of many that had to be made in the course of the Commission's investigation to make it finite. My account would not be complete without assembling in one place information about the mechanics of the inquiry. In addition to the men and women who gave evidence under oath at the public hearings, whose names appear at appendix B, others were interviewed. Their names appear in appendix C. The investigation as a whole was under the direction of counsel to the Commission and was from time to time re-routed, as it were, at the request or suggestion of those persons who had standing before it. For instance, by conferring this on Mr. Swaigen's clients the Divisional Court imposed upon Commission counsel the duty of having his clients interviewed and their documents examined. But although this is the duty of counsel and was faithfully discharged, the final responsibility for the conduct of the inquiry and the conclusions reached rests upon the Commissioner. He can re-open any matter which has apparently been fully dealt with or indeed initiate inquiries which may not have occurred to counsel and his powers, as may be observed by reading my terms of reference, are wide.

I have to record that the raw material of the investigation at the outset was a large collection of files seized or provided, and here I should say that the Ministry of the Environment for Ontario opened its files to the Commission's investigators without stint or complaint. These were carefully and laboriously examined in the course of the summer and autumn of 1977. Mr. Pepper dispatched Mr. Lamek with Corporal Thomson to Washington, D.C. for the purpose of examining the files of the Securities & Exchange Commission in the Public Records Office as to relevant operations of Waste Management Inc. and then to Chicago, Illinois to obtain the evidence of officers of that company at Oak Brook. Then Mr. Ross of Touche, Ross & Co., who was steadily associated with the work of counsel and the police investigators, had discussions with the

professional staff of Arthur Andersen & Co., both in Toronto and Chicago, and was provided with certain documents to which I have referred and which, after considering what was available from Mr. Lamek's inquiries in Washington, he considered sufficient for embodiment in his firm's report.

The investigation was aided by the use of search warrants and subpoenas issued in accordance with the provisions of *The Public Inquiries Act, 1971*. The search warrants were executed as follows:

- on June 8, 1977, at the offices of Disposal Services Limited and York Sanitation Company Limited at 55 Fenmar Drive, Weston, Ontario, the search being conducted and the files examined by Detective Sergeant L. Okmanas and Corporal P. Thomson;
- on June 15, 1977, at the premises of Superior Sand, Gravel & Supplies Limited, at Maple, Ontario, the search being conducted by Detective Sergeant L. Okmanas and Corporal P. Thomson;
- on June 16, 1977, at the residence of Norman C. Goodhead, R.R. 3, Stouffville, Ont., the search conducted by Detective Sergeant L. Okmanas and Corporal P. Thomson;
- on June 28, 1977, at both Progressive Conservative Party offices at 180 Dundas Street West, Toronto, and at offices of W. M. Kelly, at Commercial Union Tower, 55 King St. W., Toronto, the search being conducted by Detective Sergeant L. Okmanas, Corporal P. Thomson and D. P. Ross, Esq., C.A.
- on August 15, 1977, at the offices of Crawford Allied Industries Limited, Maple, Ont., the search being conducted by Detective Sergeant L. Okmanas and Corporal P. Thomson and D. P. Ross, Esq., C.A.

The following searches were conducted without the aid of search warrants:

on July 5, 1977, the offices of the Environmental Hearing Board, at 1 St. Clair Avenue West, Toronto, were searched by Corporal P. Thomson;

on October 5, 1977, files of Arthur Andersen & Co. were examined with respect to financial statements and working papers of or related to Disposal Services Limited by D. P. Ross, Esq., C.A., and Corporal P. Thomson.

In addition to the files of the Ministry of the Environment and the Environmental Hearing Board, those of the Environmental Appeal Board were also taken into possession in so far as they dealt with the persons and companies under investigation, and retained at the Commission's offices at 18 King Street East, Toronto. These companies were, of course, Waste Management Inc., its subsidiary companies Disposal Services

Limited and York Sanitation Company Limited, together with the subsidiary companies of the former, and Crawford Allied Industries Limited and Superior Sand, Gravel and Supplies Limited. The Ministry of Consumer and Corporate Relations supplied the particulars of incorporation, directors and share capital of these companies and their share registers, books of account and auditors' working papers were also submitted to scrutiny. Visits were paid to land-fill sites in the townships of East Gwillimbury and West Gwillimbury and the towns of Aurora, Vaughan and Whitchurch-Stouffville, illustrated in the map at Appendix E. A number of interviews of persons referred to in Appendix C were conducted in the course of these visits. Finally I should record that the relevant files of the Commission on Election Contributions and Expenses, established by *The Election Finances Reform Act, 1975,* were made available and examined by authorized investigators of this Commission.

CHAPTER X

Findings

At the conclusion of the argument — of course this coincided with the end of the public hearings of the Commission — on February 10, 1978, I gave a short interview to the only journalist who asked to see me. The one observation of mine that he quoted — and for triteness it could hardly be exceeded — was the following:

> **"One of the main problems facing me now is to decide who was telling the truth among the people who testified before the commission."**

But without any assistance from me, he continued in the following vein:

> **"The royal commission heard former environment ministers George Kerr and William Newman, who both insisted the political gift had not affected their decisions on garbage dump operations.**
> **The hearings also revealed that the Ontario Conservatives' chief financial officer, Helga Paide, had destroyed all files referring to the $35,000 donation in what she called a 'house-cleaning'.**
> **But commission investigators, travelling to both the Chicago headquarters of Waste Management Inc. and Washington, firmly established the existence of the donation.**
> **The donation was traced to the secret account at Royal Trust and bank records were examined. The Toronto branch manager had been instructed by his superiors that it was 'important that the name and existence of this account be kept completely confidential'."**

This cleverly constructed piece of distortion provides a significant example of the misuses of truth. With one exception, everything that is quoted above is true. The two former ministers did insist that their decisions in 1974 had not been affected, but for the reason that they had no knowledge of the donation being made until they read about it in 1977. Commission investigators were never required to "firmly establish the existence of the donation" because it was admitted from the start of the inquiry and the cancelled cheque produced. Obviously, there was no need to trace the donation to a secret account at the Royal Trust Company since this was identified on the face of the cheque and the existence of the account itself was admitted from the start. The instructions to

keep the account completely confidential were given in 1971 when it was established, and had no more to do with the $35,000 donation in particular than had Mrs. Helga Paide's destruction of the files relating to the amounts of all donations made before the coming into effect of *The Election Expenses Reform Act, 1975.* Yet notice the delicate suggestion that the only files destroyed were related to the donation in question! Clearly the type of truth resorted to — or should I say revelled in? — in this newspaper account is not what I am looking for.

But let me say at once that I accuse no one who testified before the Commission of violating his oath. I am sure that everyone in that position did his best to tell the truth, although there may have been some reservations and avoidances; for this reason it has been the custom in the courts and before tribunals to constrain witnesses to tell "the truth, the whole truth and nothing but the truth"; and I should say parenthetically that some latter-day enthusiasts for abolishing the administering of oaths to witnesses forget that there are people capable of telling the truth without telling it all. An example of the sophisticated approach to this has been illustrated in the previous paragraph. However, I am satisfied that throughout the evidence given before me there were no conscious or deliberate falsehoods told, and this is a very agreeable thing to be able to say. Furthermore, on the argument before me it was not suggested by any of the counsel engaged that there was any direct evidence of corruption or, to invoke the words of my commission, "any wrongdoing or impropriety or any improper influence being brought to bear on members of the Ontario Government, or its Public Service on the part of officials of Waste Management Inc., Disposal Services Ltd., and affiliated Companies, or of any other individual or individuals in respect of applications for land-fill sites by the said companies or affiliates or any agency thereof, since 1971 to the Ministry of the Environment or the Department of the Environment or the Department of Energy and Resources Management". They did not say and, indeed, could not have said that there were not circumstances present in the evidence from which inferences could be drawn, contrary to all the direct evidence available, that the contribution made to the PC Ontario Fund secured favourable treatment for Disposal Services Limited in respect of the 20-acre site at Maple, and for York Sanitation Company Limited in respect of the Highway 48 site in the Town of Whitchurch-Stouffville. I must briefly refer to these arguments before indicating how I was affected by them.

P. B. C. Pepper, Q.C., counsel to the Commission, had the task of ranging over the whole field of the investigation, except that of the evidence dealing with the Whitchurch-Stouffville site, which was dealt with by associate counsel P. S. A. Lamek, Q.C. After reviewing the events and

documents dealing with the applications of Disposal Services to the Ministry of the Environment and its predecessors by name for permission to operate land-fill sites, Mr. Pepper drew my attention to a number of situations from which he said inferences of corruption in the sense defined might be drawn. The first one was the failure of the Minister of the Environment or his officers to discuss with the council of the town of Vaughan the conditions of operation which had been decided upon and were to be annexed to Disposal Services' provisional certificate for the 20-acre site. At the same time it was submitted that a satisfactory explanation of oversight had been made. Second — chronologically it might be first — was the Honourable Mr. Auld's refusal on December 31, 1973, to refer the township of Vaughan's by-law to the Environmental Hearing Board and the change of mind which resulted in it being referred on February 7, 1974, and he submitted that this *volte face* had been explained as a change of recommendation by officers of the department as to how the 20-acre site was to be dealt with. Third, the preparation of a submission by the Waste Management Branch recommending against the Disposal Services' application originally designed for submission to the Environmental Hearing Board was never, in fact, reduced to final form or presented to the Board. This, again, might raise suspicion of interference with the formulation of departmental policy, but since the draft submission was, on the evidence, prepared before April 1, 1974, the date of a sweeping reorganization of the Ministry, the change of policy which did authorize representations to the Board by the interested branches had not been made. Fourth, of course, the relationship in time between the date of Disposal Services' $35,000 cheque drawn on July 24, and the date of its provisional certificate for the 20-acre site issued by the Ministry of the Environment on July 31, 1974, was most suspicious of all.

Although in actuality Mr. Lamek's argument did not interrupt Mr. Pepper's, it is convenient to consider it here since it was confined to the Whitchurch-Stouffville evidence and Mr. Lamek warned me against the danger of separating the Whitchurch-Stouffville scene and chronology from those of Maple. I have done exactly that in compiling this report and it is the only practical way of dealing with the evidence; the difficulties of synthesizing are eased by the reflection that generally speaking most of what happened at Maple was earlier than the date of the donation, while most of what happened at Whitchurch-Stouffville was later. The theme of Mr. Lamek's argument was that the sturdy stance adopted by the Ministry up until March 15, 1974, the day that Disposal Services ceased dumping in Maple and began to augment the dumping of York Sanitation Company at Whitchurch-Stouffville, suffered a change culminating in the acceptance of Mrs. McCaffrey's opinion in July that

prosecution for exceeding the tonnage limitation of the control order would fail. Then the business of the weigh scales prescribed under that order in May and not installed until November was another example of the Ministry being either misled or closing its eyes to breaches of the order, and the failure to bring York Sanitation to book until over two years after the installation of scales had made the over-dumping infractions obvious might well be construed against it. Mr. Lamek also mentioned two situations which required weighing by the Commission; the failure to consult the council of the town of Whitchurch-Stouffville as undertaken by the Ministry about the conditions to be annexed to the provisional certificate of York Sanitation issued on September 2, 1976, strangely reminiscent of the same oversight as to Disposal Services' certificate for the 20-acre site, and what he described as "the apparent dilution of the (Environmental Hearing) Board's recommended condition as to the guaranteeing of water supplies". (It will be recalled that the Board had recommended that the operator be liable for damage to the municipality's water supplies generally if it occurred and the Environmental Approvals Branch's certificate confined that liability to the wells on lands adjacent to the site.) He made the following considered statement:

> **"But in considering whether an inference can properly be drawn from the evidence it may be that all possible evidence which is capable of giving rise (to it) must be considered together in a parcel. And it is my submission that even the aggregate of those matters of evidence would be a flimsy basis for an inference of impropriety."**

Returning to Mr. Pepper's argument, which henceforth dealt with evidence about the donation itself, what the donors thought it might accomplish and what the donee did with it, he said that my greatest problem would be with inferences to be drawn from the Beck-Paul memorandum. There was nothing wrong with giving money to a political party, but it was wrong to give money to a political party in expectation of a benefit which a government controlled by that party could bestow. I agree with this proposition, as will be seen. He then pointed to a wealth of information which Paul had recorded in the memorandum explaining to the auditors of Waste Management Inc. the company's treatment of over $300,000 as deferred costs for amortization generally over the life of assets in the Maple area could only have been derived from Canadian sources — Goodhead, Solomon or Pennington and perhaps all three — responsible for the planning and execution of the donation itself. This, then, I might infer was guilty knowledge of the price of obtaining a permit: the $35,000 to the ruling political party in Ontario and 43 acres of filled land of even greater value to the town of Vaughan, the members of both being in a position to confer or withhold benefits which were vital

to the business of Waste Management Inc. and its subsidiary companies. An alternative suggestion was that Goodhead and Solomon had persuaded the people in Chicago that the donation was necessary, although they knew that it was not: a justification of the expenditure nevertheless had to be made to the parent company. I quote part of the end of Mr. Pepper's argument which puts the problem neatly:

> **"MR. PEPPER: And I come back to the cheque for a second. The company was in an unfavourable position at July of 1974 — this is Disposal. Now I just bring these bits together for you for a moment.**
>
> **They had at Maple been forced off the 20-acre site by the Minister taking some sort of a stand and their voluntarily getting off the 20-acre site. And they had a site at Whitchurch-Stouffville for which they did not have a certificate. The certificate had expired. And they were forced to divert a proportion of the garbage that would have gone to Maple to Whitchurch-Stouffville, which resulted in severe over-dumping.**
>
> **I say 'over-dumping' on the basis of the previous certificate that they got and on the basis of the control order that had recently been issued.**
>
> **Mr. Goodhead was honest enough in the witness box to say this was economically a problem, that all right, they could have taken the garbage to some other sites but none was quite as convenient as Whitchurch-Stouffville. And having in mind what it costs to run transports and what the Teamsters' Union people get, one can understand that.**
>
> **Consequently in July of 1974 the relationship of Disposal and the Department was, I don't think it is too strong to say a delicate one. They had got a swarm of bees around them from the town of Whitchurch-Stouffaille and the town of Maple.**
>
> **Therefore those circumstances, together with the other circumstances of the size of the cheque and what is put in this memorandum, can create an inference that these monies were paid with not merely the hope of (what shall I say?) improving their relationship and obtaining the certificates that they sought, but with the expectation of it.**
>
> **But I am not asking you to draw that inference, Mr. Commissioner. It seems to me on the evidence here it is equally likely that the $35,000 was paid as a political contribution without any impropriety attached to it.**
>
> **I finally say to you that it is my submission that the toughest thing you have to tussle with is that Paul memorandum."**

J. F. Howard, Q.C. for Waste Management Inc. and its embattled subsidiaries began by agreeing with me that I was not concerned with wrongdoing in the form of overloading land-fill sites for which, it will be remembered York Sanitation Company was fined $14,400, but wrongdoing only on the part of functionaries or others in respect of applications to the Ministry, and that generally the terms of reference were to be construed in this way. He went on to make a robust defence against the drawing of inferences based on chronology, pointing out that apart from the close association of the date of the $35,000 cheque and the issue of Disposal Services' certificate for the 20-acre site, the whole administrative

process was spread out over many months in the cases of both Vaughan and Whitchurch-Stouffville. In this connection he said the following:

> **"I would just like to emphasize part of the chronologies that have been dealt with by my friends. First with respect to Highway 48 — and I am concentrating on the applications now — the application was in June of 1974, Exhibit 152. The report of the Board was October the 8th, 1975, some sixteen months later. The certificate which, as Mr. Lamek says, bristles with conditions, is September of 1976, some twenty-seven months after the application.**
> **With respect to the 20-acre site, the first application that relates to the site is dated January the 5th, 1972, Exhibit 44.**
> **I won't go through the history again. There was as a result of a certificate which applied to the whole and appeals and limitations and so on, a new application in November of 1973, which is Exhibit 55.**
> **The report of the Board in that case is May 8th, 1974. And depending on how you look at it, it is either six months or twenty-eight months after the process started. And the certificate in July of 1974 is either nine months or thirty-one months after the applications start.**
> **With respect to the Maple Pits, as my friends call them, that application of Superior was August, 1973, Exhibit 84. The hearings finished either in late 1977 or early 1978 — I am not sure, but I think late 1977, more than four years after the application was filed. And there is no report yet; and there is no certificate yet.**
> **Now all I say as a result of that is if there was any improper influence being brought to bear with respect to the application it certainly did not generate much speed. I suggest the history of the matter indicates that the matters had been very carefully considered in detail."**

Mr. Howard did not share Mr. Pepper's concern about the Beck-Paul memorandum, pointing out that on its face it was contemplating much more substantial operations than the 20-acre site — in fact, the whole Keele Valley Landfill, as it was called — and that the $35,000 donation was only a small item in deferred costs of over $300,000. Analyzing the amortization over the life of the project, Paul was using a figure of 6¼¢ per ton and contemplating 50,000,000 tons of waste and was concerned to justify the accounting treatment of a large sum. There was simply no case for saying that the $35,000 donation was a *quid pro quo* in relation to the 20-acre site and if it had been, one might expect the timing to be different. The donation was treated just like the gift of 43 acres to the town of Vaughan, a matter from which no revenue was derived, and which had to be amortized; without these items being treated as deferred costs Disposal Services must have shown a loss for the year.

R. J. Wright, Q.C. for the Environmental Assessment (formerly Hearing) Board pointed out that its members were involved because of their participation in the process essential to the granting of an application where a public hearing is directed. He pointed out that in the case

of the 20-acre site near Maple the Board's recommendation was handed down on May 8, 1974, two and a half months before the cheque was signed. He referred me to Mr. Goodhead's denial upon oath of ever having mentioned his company's contribution to any member of the Board or any attempt to do so, and noted that none of Dr. Cameron, Mr. Hassard and Mayor Ratcliffe had indicated any evidence of impropriety by any member of the Board — and I would add Mayor Williams of Vaughan to this group — although there was some criticism of the manner in which the hearings were conducted.

D. W. Brown argued on the last day, February 10, 1978, at length on behalf of the Ministry of the Environment, which had been so long engaged with the problems of the operators and the residents of the towns of Vaughan and Whitchurch-Stouffville. He referred to the evidence of each of the three ministers, Messrs. Auld, Newman and Kerr, who had held the portfolio during the period specified in my terms of reference, much as I have done earlier in the text of this report. He drew my attention to the fact that a "stop order" which was being urged upon ministers both in the Legislature and in the municipalities, could only be issued under the provisions of section 7 of *The Environmental Protection Act, 1971,* where in the opinion of the Director, "upon reasonable and probable grounds" contamination constitutes "an immediate danger to human life, the health of any persons, or to property". He was at pains to dispel any impression that Paul Isles was, as it were, on Waste Management Incorporated's "team", as might appear from a letter written by Goodhead to Beck, referring me to Goodhead's evidence that this was just a suggestion for the future and to Isles' evidence that he had never been approached to leave the Ministry by Goodhead or anyone else involved in this inquiry. The Ministry had a policy, not only as to operating sites, but also as to prosecuting for breaches of control orders and conditions attached to provisional certificates, of seeking the co-operation of the operators. When I asked Mr. Brown if he agreed with the McMurray memorandum, he said he did to a certain extent, but thought that McMurray "was talking more from his heart than his head". York Sanitation Company had clearly misled Isles and other officers of Central Region as to the prospect of securing weigh scales at the Whitchurch-Stouffville site and he argued that this was done deliberately by McCaffery. Finally he said that the Ministry may have been slow to respond to breaches of the control order and the conditions of York Sanitation's provisional certificate, but there was no evidence of any kind to suggest that any improper influence was brought to bear upon the Ministry to delay prosecution of that company.

J. Z. Swaigen for the Preserve Our Water Resources Group and Keith

Hutchinson, who were interested only in the Whitchurch-Stouffville site of York Sanitation Company, was not prevented by me from dealing with the situation in the town of Vaughan, and very fairly said that he agreed with counsel to the Commission that there was no direct evidence of corruption before the Commission and that he could not say that anyone who had testified was to be disbelieved. He agreed further that explanations had been given for activities that required them and, in most cases, they had been satisfactory. He paid tribute to the competence and integrity of the officials of the Ministry concerned and of the members of the Environmental Assessment Board and since his experience of their operations is wider than other counsel this was an endorsement of some significance. It was true that $35,000 was a small contribution for a very large company like Waste Management Inc. to make and they might have been expected to make a larger one in exchange for some certainty of success in being able to exploit "one of the largest land-fill sites in North America". After reviewing the evidence at considerable length, the main thrust of Mr. Swaigen's argument became apparent. First, I should make findings of impropriety against the Ministry for failing to prosecute violations of the regulations made pursuant to *The Environmental Protection Act, 1971*, and other restrictions imposed on the operators, even though that failure could not be discerned as connected with any knowledge of a contribution to the Progressive Conservative Party of Ontario and, secondly, that if the department has some discretion which can be properly exercised in the matter of prosecution, it had at some point abandoned it for a refusal to prosecute which was improper. He put it this way:

> **"MR. SWAIGEN: And my submission is that the Ministry at some point passed that mark and went over from a proper way of looking at law enforcement into an improper one. I cannot state at what exact point I would say that is in general, but certainly with respect to Mr. Hutchinson's property, for example, at the point where a licence is issued on the understanding of expert testimony and a lot of engineering and everything else that the run-off to his property would be controlled, and after this had been happening year after year to him, as stated in his affidavit, that surely that is one example of a case where the Ministry has gone overboard."**

Then later with even more emphasis he proceeded:

> **"MR. SWAIGEN: And I have the greatest respect for Mr. Mulvaney and for his legal staff. Mr. Jackson, who I have also referred to, I have the greatest respect for his intellect. I don't think he does that much litigation, so I don't know about that. But certainly Mrs. McCaffrey would not refuse to go to court because she were afraid to take on a case. And she sizes these things up very well, I think.**
> **But what I am suggesting to you, sir, is that you should not take the same approach that it is just a matter of people trying to earn their living and**

that they should have the right to earn their living no matter what, and that the Ministry should bend over backwards in relation to them — but there are laws and that the rule of law must be considered, that the Ministry acts improperly if it flouts the rule of law and brings the rule of law into disrespect by pretending that all there is here is unfettered administrativet discretion rather than statutory standards."

Finally Mr. Swaigen and I became involved in a discussion of the law affecting the duty to prosecute as opposed to the exercise of any discretion by a government department. He cited *Regina* vs. *the Commissioner of Police of the Metropolis ex parte Blackburn* 1968 2 W.L.R. 893, a case in the Court of Appeal in England, (Lord Denning M.R., Salmon and Edmund Davies, LJJ), where it was held that the police were not entitled to develop a policy not to prosecute gambling. At the end of a long and careful argument he summarized his position:

"I would submit that at some point the Ministry over-stepped the bounds of propriety, and I would ask you to make at least two findings: one, that the Ministry acted with impropriety in granting a certificate of approval to York Sanitation Company Limited in Stouffville when it either knew or should have known that the company would not comply with the Environmental Protection Act or with the conditions of that certificate.

Secondly, I would like you to find impropriety in the Ministry establishing a policy that it would never prosecute, precluding itself from prosecuting known breaches of the law, as long as the law-breaker were showing some improvement and cooperation.

. . . . . And I submit that it is also open to you to find that the Ministry acted improperly in failing to consult with and involve the POWR group and the residents of Stouffville and both the Town Councils of Maple and Stouffville with regard to the conditions of the certificates of approval for the 20-acre site and for the Stouffville site.

Because it is one thing to hold a public hearing in which all parties are consulted and it is another to then negotiate a deal without those parties being involved in which, for instance, the recommendation for a fund to protect the municipal water supplies is reduced to a condition to protect a few neighbours.

With regard to the Environmental Hearing Board, I am not asking you to make any findings. The bulk of the evidence has dealt with the Ministry of the Environment. I would suggest to you that in that case there really is insufficient evidence of what went on at these various hearings for you to draw very many conclusions about the conduct of those hearings."

In reply Mr. Pepper was quick to point out that my terms of reference did not allow me to make findings of impropriety divorced from any connection with or any influence produced by the $35,000 contribution which lay at the roots of the inquiry. He went on to develop a political view of law enforcement, using the word "political" as I do in its precise and original sense.

"I have some sympathy with the Ministry policy of the carrot and the donkey.

Although I would put myself in the forefront outside this room in defending the environment, I have to ask of Mr. Swaigen a sense of proportion. He has to understand, for instance, that garbage is an essential service and that it has to be disposed of.

That does not mean to say I think that the rights of the people should be overridden. But if I may take an example, Mr. Swaigen (I don't know whether you will agree with me) but the hydro towers that cross lovely parts of our Province I view as a kind of visual pollution. But if I want to turn on a cup of coffee in the morning, like you do, I have got to put up with that. And that is what I am talking about in a sense of proportion. You can't have the one without the other."

But Mr. Pepper went on to point out that there were other ways to assert one's right against lawbreakers than by relying wholly on a government department or, for instance, on the Canadian Environmental Law Association. One could, for instance, bring an action sounding in nuisance and, in the case of leachate and other material coming upon one's lands, expect to succeed. Then he took me to task for suggesting that a contribution of $35,000, provided it were proper, was not too much for a company the size of Waste Management Inc. to contemplate. There ensued a prolonged discussion between Mr. Pepper and myself as to distinctions between the evidence of Lawrence Beck and Robert Paul, and that of Dean Buntrock and Max Solomon, in which counsel said that his greatest difficulty was accepting the statements that there had been no admonishment of Goodhead and Solomon over the giving of the money to Mr. Kelly's fund, and he suggested that the Waste Management Inc. officers did exactly what they had denied doing. Solomon said, "We have to do it", this evidently on the ground that the 20-acre site with its advanced engineering was a prototype for the whole Maple Pits' development. Mr. Pepper's concluding observation that it is "very difficult to believe these Americans that they were not as cross as a witch with Solomon for having spent $35,000 of their money", merely serves to emphasize the difficulties of any fact finder during an investigation of this type, and it will be recalled that I dealt with this difficulty when the nature of the Beck-Paul memorandum was considered in chapter VII.

The term "fact finder" does not do justice to the responsibility of a commissioner under *The Public Inquiries Act, 1971*. In my case I am asked to make recommendations, and this involves taking a more general, perhaps more philosophic view of the subject of the Commission's inquiry than the mere finding of facts however important that may be. As I said earlier in the report, I have already made statements which are to be considered findings of fact, but there remain some points of doubt which are open to decision by inference based on probability. The responsibility of making such decisions is very great, and I am mindful

that what is said by me may be unacceptable and injurious, although not subject to appeal like the decision of a judge in court. It is hardly necessary to say that in a criminal matter an accused person enjoys the protection of the burden laid upon the prosecution to prove the charge beyond a reasonable doubt. No such burden lies upon counsel to a Royal Commission and, indeed, there is no obligation to prove a case. An inquiry of this kind is not a trial, but where the conduct being investigated is capable of attracting a criminal prosecution or ruining a reputation, it is, in my view, necessary to require something more than a mere tilting of the scales against a person affected by its result before a finding of wrongdoing, or even impropriety is made.

I must say a word about definitions. Adverting to the words used in my commission, I have no difficulty with "wrongdoing" or "improper"; "impropriety" is defined in the Oxford English Dictionary as:

> **"1. The quality of being improper**
> **(a) want of accordance with the nature of the thing or with reason or rule; incorrectness, erroneousness, inaccuracy**
> **(b) want of accordance with the purpose in view; unsuitableness, unfitness, inappropriateness;**
> **(c) want of accordance with good manners or decorum, unbecomingness, unseemliness, indecency, morally improper conduct.**
> **2. With "an" and plural: An instance of improper language, conduct, et cetera; a breach of propriety."**

I respectfully submit that the word "improper" as a qualification of "influence" might well have been omitted. It is difficult to imagine any influence brought to bear on the people enumerated and in respect of the applications under investigation which would not be improper. It is clear to me that it would be inappropriate and perhaps erroneous if I were to adopt all of the meanings given in the above wide-ranging definition and that I should select "morally improper conduct" as a synonym for "impropriety". At the risk of belabouring the point perhaps I should say that this Commission has inquired into a multitude of matters other than wrongdoing, impropriety or improper influence, and if I had said at the beginning of the inquiry, "specify the wrongdoing or impropriety and we will inquire into it", that would have been inappropriate. A useful discussion of these terms occurs in chapter 7 of the Report of the Public Inquiry into Ronto Development Company by my colleague the Honourable J. David Cromarty, (Queen's Printer for Ontario 1977). I respectfully agree with his conclusions and I have only to add that because my definition of "impropriety" was taken from the Oxford English Dictionary proper, it does not follow that it was improper for him to select the Shorter Oxford English Dictionary for his.

In the absence of any evidence other than that of circumstances

which being unexplained might arouse suspicion, I have to say categorically that I am unable to find that there was any wrongdoing or impropriety or any improper influence brought to bear on members of the Ontario government or its public service, on the part of officials of Waste Management Inc., Disposal Services Limited and affiliated companies, in respect of applications for land-fill sites by them from 1971 to the present day. As to whether there may be in connection with "any other individual or individuals", I am unable to say with certainty because the inquiry was directed to the activities of the companies named and their officials. All I can say is that the evidence offered at the public hearings of the Commission and the many statements taken and searches made by the Commission staff and by individuals interviewed by its members did not disclose, much less implicate, any persons who could be so described. Putting this conviction in another way but with an eye to the statute under which this Commission has been executed, I make no finding of misconduct on the part of any persons such as would require me to give them reasonable notice of the substance of the misconduct alleged as provided by section 5(2) of *The Public Inquiries Act, 1971* because of the absence of any evidence of such misconduct.

Having said this, I consider it necessary to dwell for a moment upon specific issues, as counsel did in argument:

(1) There is no doubt in my mind, and it was conceded by all counsel, that $35,000 constituted a large donation measured by common experience of political fund-raising in Ontario. But there was in 1974 nothing improper in making large donations to political parties and there was nothing unlawful about what was done. The size of this one becomes less significant if, as the witnesses Goodhead and Kelly have said without contradiction, it represented contributions for the three years, 1972 to 1974, and is attributed to the whole of the enterprise of Waste Management Inc. and not simply to Disposal Services Limited, which authored the cheque.

(2) Close association in time between the making of Disposal Services' cheque to account 5000 on July 24, 1974, and the issuing of that company's provisional certificate of approval for land-filling the 20-acre site near Maple on July 31, 1974, I find to be coincidence only. All the evidence is to the effect that no one at the Ministry of the Environment, from the Minister down, knew anything about the donation until three years later or that what was done was not as consistent with absence of knowledge or of

influence, as with their presence, and of the latter there is not a shred.

(3) I make the same observation about the course of events in the Ministry's dealings with York Sanitation Company Limited where there is no such apparent correspondence of dates, but where it is suggested that the attitude of its officers became less alert about and more compliant with first, breaches of the "control order" second, breaches of regulations made pursuant to *The Environmental Protection Act, 1971*, and third, ultimately with conditions imposed by York Sanitation Company's provisional certificate. These have been explained in terms of the Ministry's policy to wean operators away from bad habits and to treat co-operation on their part as a sign of grace, though compliance was not always achieved. Mr. Justice Houlden in *Regina* v. *Canadian Pittsburgh Industries Ltd.* [1973] 3 O.R. 360, considered the statute at page 364:

> **"I think it is fair to say that the scope and purview of the 1971 Act is similar to that of the 1967 statute; I think it is also fair to say that the remedy sought to be applied is similar with the important qualifications that the Legislature in the 1971 Act was indicating that its prime concern was the clearing-up of the source of pollution rather than the imposition of a penalty."**

But flagrant and persistent breaches of the law are not to be tolerated. After March 15, 1974 the Ministry was immediately aware of the large increase in daily tonnage being dumped by York Sanitation at the Whitchurch-Stouffville site. At the time this company had no certificate, but its application had been for 150 tons a day. On May 23, the Ministry imposed a control order, an essential term of which was to limit dumping to 300 tons a day. I find that York Sanitation was dumping 700, 800 and even 900 tons a day. This was no mere technical breach but a studied flouting of the Ministry's order. In May of 1974, Mr. Isles recommended prosecution. In June of 1974 the Minister promised prompt legal action. In July of 1974 Mrs. McCaffrey was of the opinion that a prosecution would fail since weigh scales had not been installed and the amount of dumping was only estimated. She knew that the Ministry had estimates provided by York Sanitation itself, tending to confirm its own calculations and in law amounting to admissions. But based on her experience she maintained her opinion that prosecution would not be successful. I respect her opinion but do not think in the circumstances of the matter that the Minister should have accepted it. It was plain to

everyone that the limits of dumping had been unblushingly exceeded and it was in the selfish interests of York Sanitation to delay the construction of weigh scales. The result was that its activities continued unchecked and prosecution was not launched until December of 1976. The company eventually pleaded guilty and was convicted in June of 1977. I find no impropriety in all this but I am critical of the failure to prosecute promptly.

(4) I find that satisfactory explanations have been made of the change in policy which resulted in the Honourable James A. C. Auld's decision to refer the prohibitory by-law of the town of Vaughan to the Environmental Hearing Board from February 7, 1974, after refusing to do so on December 31, 1973, with the result that its disallowance was recommended. No inference of impropriety or improper influence should be drawn after considering the evidence of the Ministry's change of policy.

(5) I reached the same conclusion about the change made quite properly and in accordance with the discretion vested in the Environmental Approvals Branch in converting the recommendations of the Environmental Hearing Board for a fund to be provided by the applicant to meet expenses arising from the pollution of the water supply of the town of Whitchurch-Stouffville into one designed to do the same only for wells adjacent to the site. To be sure the fund as now constituted according to the evidence amounts to upwards of $80,000 and if the Environmental Hearing Board's recommendation had been accepted, it would of necessity have been crippling. The Branch Director, Mr. D. P. Caplice, recognized that York Sanitation Company should have relief from what amounted to a prohibitory condition.

(6) I am satisfied with the explanation given as to why the draft submission of the Waste Management Branch evidently composed in March, 1974, and expressing opposition to the granting of a provisional certificate to fill the 20-acre site at Maple to Disposal Services Limited was never presented to the Environmental Hearing Board. There is little doubt in my mind that had there been any improper influence brought to bear upon Mr. Isles and his colleagues to alter their stance, there would have been either much more evidence of the struggle than a fugitive undated draft memorandum in the file or no file at all.

(7) I do not fully share Mr. Pepper's preoccupation with the significance of the Beck-Paul memorandum of February, 1975, which provided the requested background information to Arthur Andersen & Co., auditors of Waste Management Inc., on management's

decision to capitalize as deferred costs items including the $35,000 donation in the consolidated financial statements for the year 1974. It does not seem to me to matter what the senior officers of Waste Management Inc. concerned with the Canadian operation of Disposal Services Limited and York Sanitation Company Limited thought about the purpose of the donation as long as that purpose was not realized in the sense contemplated in my terms of reference. I admit, however, that the circumstances described in the memorandum, although assembled to justify an accounting treatment, make it impossible to doubt that these successful American businessmen believed that a donation of this kind could conceivably do their Canadian corporate offspring some good. I believe they so regarded the presentation of 43 acres of their own property in the Maple area, filled, finished and planted to the town of Vaughan, and the evidence of Mr. Beck indicated that the company sometimes found it necessary to reward local municipalities with whom they had dealings in this way.

(8) I believe upon close examination of the evidence as transcribed, that Max Solomon may well have said of the donation, "We have to make it", to either Mr. Buntrock or Mr. Beck, and that he had been told to carry on as usual by either one or both of them. It may be that there was no meeting of minds as to the implications of what was being referred to as the evidence of Buntrock and Beck showed. I do not reject Mr. Pepper's speculation that Solomon may have over-emphasized the need for a political contribution to forestall criticism of its amount.

(9) I believe that the following evidence of Norman Goodhead, which is the only evidence that he gave as to communicating with the personnel of Waste Management Inc. about political donations, is probably true subject to a qualification which I will state after quoting it. He had just been asked by Mr. Pepper why Disposal Services Limited inspired by him had given such a large donation. He replied:

> **"A. The policy that I discussed with Mr. Solomon was the view to making a more substantial donation to the Party, having in mind, as I indicated, it was now owned by American interests and we felt that this was a proper and substantial time in which to do that. And the company had been — Waste Management had been in effect for approximately a year or two and we have the opportunity then to, having had opportunities to discuss with Waste Management our particular way of operating here in Canada, that we felt this was right and proper and discussed it with the various people who were interested and which we had to answer to, and we all agreed that this was a reasonable situation, having in mind the cost of election campaigns**

and that we intended, from this point, from that point on, to make substantial contributions to parties who we considered to be operating in our best interests and in the interests of the people of the jurisdiction in which we were located.

Q. Yes.

A. And as I indicated to you — and as I think the record indicates, Mr. Pepper — that since that time we have made the maximum donation allowable under the statute."

I am satisfied, on the other hand, that the Waste Management people, Buntrock, Beck and Paul, did not know the size of the donation which was actually made at the time and by giving a general approval in principle to carrying on as before, felt a sense of outrage that the Canadian company should disburse a sum of $35,000. This would explain the apparent conflict in the evidence of these men and that of Goodhead, Solomon and Pennington. It would also explain why there was no "calling on the carpet" by Waste Management Inc.

(10) The findings which I was asked to make by Mr. Swaigen against the Ministry of the Environment for failing to prosecute York Sanitation Company for violations of the control order and of the provisional certificate of approval, particularly caused by dumping in excess of the maximum daily amount permitted, of granting that company a certificate of approval when it knew or should have known that the recipient would not comply with the statute or with its conditions, and for failing to consult with the Preserve Our Water Resources Group and other residents of Stouffville, and the mayor and councillors of both Whitchurch-Stouffville and Vaughan as to conditions annexed to the provisional certificate of approval of that company and Disposal Services Limited, cannot be made on the simple ground that my terms of reference do not contemplate any impropriety not connected with Waste Management Inc., Disposal Services Limited, and affiliated companies, in respect of wrongdoing or impropriety or any improper influence being brought to bear. Mr. Swaigen's concern with the development of a departmental policy of "hands off" is another matter, and I shall have a recommendation in connection with that. But as to findings of impropriety in connection with the other matters he raised, I adopt Mr. Pepper's observation in reply:

"I therefore suggest it is not right for you to look at the activities of the Department without more; that in order for there to be impropriety there has to be an inference of a connection between that conduct and the main company."

CHAPTER XI

Recommendations

It necessarily follows from what I have said in the previous chapter that I recommend no criminal prosecution or punitive action of any kind against any person arising out of this inquiry. My task is made easier when considering the handling of election expenses by the enactment of *The Election Finances Reform Act, 1975*, Statutes of Ontario 1975, c. 12, with amendments, which places modest limits upon the amount of any contribution to be made (and only to registered political parties) and provides for record-keeping, accounting and reporting for the benefit of and to a Commission reporting annually to the Speaker of the Legislative Assembly. This legislation was in force for more than a year and a half before the Disposal Services donation became known through the publication of the Globe & Mail despatch. It imposes a maximum limit of $4,000 divided equally between a registered party and registered constituency associations in any year, and the same for any "campaign period", and prohibits any donation of the size of $35,000 in any year or any campaign period or employing the device, which Goodhead said he resorted to, of giving a lump sum in respect of more than one year.

I have, however, two recommendations to make arising out of the evidence. The first is the result of having observed the difficulties which both members of the public and members of the Legislative Assembly have with what appears to be unequal application of the law. Unless a constating statute provides that no prosecution shall be brought for infraction of its provisions or the committing of any proscribed offences without leave of the Attorney General, no public official is entitled to decline or delay prosecution *as a matter of policy*. There is no doubt in my mind that a great deal of justifiable public resentment was occasioned by the spectacle of dump trucks rattling past the building where a hearing was convened to entertain an application for authority to do what their owners were doing without any authority whatsoever, and by open violation of orders made by a ministry of the government

on the grounds that either an appeal was pending or the officers of the ministry were trying to coax a recalcitrant operator into a mood of compliance with what had been ordered.

My second recommendation concerns *The Environmental Protection Act, 1971,* S.O. 1971, c. 86, as amended, sections 33a to 39 inclusive and cognate sections. Earlier in this report I have had occasion to comment on the anomalous position of the Director under these sections who is, in fact, the Director of the Environmental Approvals Branch of the Ministry of the Environment. He it is who receives applications for certificates of approval, who can require a hearing before the Environmental Assessment Board, or must require it in a proper case, who is the sole source of certificates of approval regardless of the recommendation of the Board which is made to him and him alone, and can gainsay the recommendation of the Board so long as he considers it. All of these powers should be reserved to the Minister who has to answer for their exercise in the Legislative Assembly. In addition to this constitutional reason for change, there is one based on consistency, in that the Minister himself exercises similar powers under section 35 dealing with disallowance of municipal by-laws. In the course of his evidence Mr. D. P. Caplice, Director of this Branch, indicated that amendments to this effect had been contemplated and may have just missed being introduced in the last session of the Legislative Assembly. I have no other advice on this and it is possible my recommendation is supererogatory.

I therefore recommend that:

1. *Except where the fiat of the Attorney General of Ontario is required to authorize a prosecution of any person or corporation under any statute, the law should be uniformly enforced against violators of any provision of a statute of Ontario in any case where the evidence requires or justifies a prosecution.*
2. *Part V of The Environmental Protection Act, 1971, S.O. 1971, c. 86, as amended, be further amended to provide for the Minister of the Environment, not the Director, issuing certificates of approval and provisional certificates of approval for waste disposal sites and waste management systems and in respect thereof referring all such applications to the Environmental Assessment Board in those cases where the statute now provides for this to be done by the Director.*

CHAPTER XII

Reflections

What I have said as to *The Election Finances Reform Act, 1975*, emancipating political parties and the public from the tyranny of large donations does not in any way diminish the importance of preserving the principle of private contribution and avoiding the governance of party by the State. In this respect the statute with its provisions for registration of political parties may have gone too far. We have seen since the conclusion of the Second World War parliamentary democracy experimented with in many new states where it has been natural for their leaders to look to parliamentary models, only to be subverted by a one-party form of government which can be replaced only by violent and unlawful means. The system of parliamentary government which we have inherited and maintained has recently been under attack here and in Britain because it confers on the leader of a parliamentary majority virtually unchallengable power. This has been accompanied by a rising interest in the operation of the Constitution of the United States with its cherished checks and balances which have managed effectively to curb the overweening power of the Executive in recent times. Our system and the American system have many things in common in spite of important differences, and one thing in common over all — the presence of party. Without the availability of a party other than the party in power to provide an alternative for electors when they wish to change the men in power and the measures they propose, these systems could not function. Putting it in another way, diversity of party is protection against the drift to totalitarianism as exemplified by the one-party state.

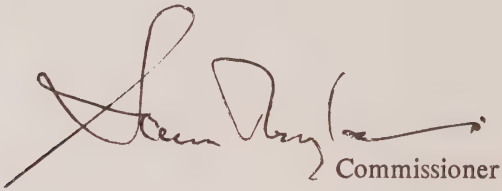
Throughout the three hundred years of their development in the Mother of Parliaments and her offspring the independence of parties has been a vital and distinguishing quality; independence of authority, expressed in a willingness to assume office if supported at the polls, and a readiness to relinquish it on a question of principle or when that support is withdrawn. Political parties must, therefore, be sustained in season and out by their members and supporters and modern prejudice

against political fund-raising is, in my respectful view, both uninstructed and dangerous to the preservation of constitutional freedom.

I am happy to have presided over a searching inquiry in a case of some notoriety and to have found no evidence of corruption. And I conclude with a quotation from a speech on the Address in 1846 by Benjamin Disraeli, still over twenty years away from becoming Prime Minister of England:

> **"Above all, maintain the line of demarcation between parties; for it is only by maintaining the independence of party that you can maintain the integrity of public men, and the power and influence of Parliament itself."**

ALL OF WHICH I RESPECTFULLY SUBMIT FOR YOUR HONOUR'S CONSIDERATION.



Commissioner

Osgoode Hall,
Toronto.
March 30, 1978.

APPENDIX "A"

List of Exhibits

Ex. No.	Description
1.	Proclamation of Royal Commission of Inquiry by Order-in-Council 1424/77 of 15 May 1977 as amended by Order-in-Council 1458/77 of 23 May, 1977
2.	Article which appeared in "Globe & Mail" dated May 12, 1977
3.	Cheque on Toronto-Dominion Bank drawn by Disposal Services Ltd., dated 24 July, 1974 for $35,000, with forwarding letter from Goodman & Goodman dated 30 May, 1977
4.	Notice appearing in Toronto "Star", "Globe & Mail" and "Sun" and Richmond Hill "Liberal" on 25 May, 1977
5.	Notice of hearing on 3 June, 1977 published in the Ontario Gazette
6.	Notice of resumed hearing on 12 September, 1977 published in the Ontario Gazette
7.	Corporate documents of Disposal Services Ltd.
8.	Corporate documents of Superior Sand, Gravel & Supplies Ltd.
9.	Corporate documents of Lilleshall Investments Ltd.
10.	Corporate documents of Lochinver Holdings Ltd.
11.	Corporate documents of Disposable Materials Ltd.
12.	Corporate documents of Disposal Services (Western) Ltd.
13.	Corporate documents of York Sanitation Company Ltd.
14.	Corporate documents of Crawford Allied Industries Ltd.
15.	Application and Provisional Certificates of Approval for a Waste Management System granted to Disposal Services Ltd.
16.	Application and Provisional Certificate of Approval for a Waste Disposal Site granted to Disposal Services Ltd. on 23 March, 1973
17.	Application and Provisional Certificate of Approval for a Waste Disposal Site granted to Disposal Services Ltd. on 31 July, 1974
18.	Application and Provisional Certificate of Approval for a Waste Disposal Site granted to Disposal Services Ltd. on 20 June, 1973
19.	Application and Provisional Certificate of Approval for a Waste Disposal Site granted to York Sanitation Co. Ltd. on 14 July, 1976
20.	Application and Provisional Certificate of Approval for a Waste Disposal Site granted to York Sanitation Co. Ltd., on 10 August, 1971

21. Application and Provisional Certificates of Approval granted to R. W. Bremner Co. Ltd. on 10 August, 1971, 8 November, 1971 and 21 July, 1972, together with Provisional Certificates of Approval granted to York Sanitation Co. Ltd. on 21 January, 1974 and 2 September, 1976
22. Applications and Provisional Certificates of Approval granted to York Sanitation Co. Ltd. on 10 August, 1971, 4 July, 1972, 11 October, 1972, 17 January, 1974 and 16 March, 1974
23. Applications and Provisional Certificates of Approval granted to York Sanitation Co. Ltd. on 10 August, 1971, 8 March, 1972, 8 January, 1973, 18 March, 1974, 1 January, 1975, 20 January, 1976 and 25 August, 1976
24. Application for grant of a Certificate of Approval by Superior Sand, Gravel and Supplies Ltd. dated 16 August, 1973
25. Application for Certificate of Approval for a Resource Recovery Site by Crawford Allied Industries Ltd. dated 9 October, 1974
26. Application for Certificate of Approval for a Waste Disposal Site by Crawford Allied Industries Ltd. dated 30 March, 1976
27. Large map showing parts of Regional Municipality of York and Simcoe County with sites described in Exhibits 15 to 26 inclusive identified
28. Book of photographs of sites involved in the Inquiry
29. Affidavit of James Henry Sanders dated 6 October, 1977 with attached documents
30. Affidavit of Keith Hutchinson dated 6 October, 1977
31. Affidavit of Merlyn Baker dated 6 October, 1977 with attached correspondence
32. Submission to the Ombudsman on behalf of Preserve Our Water Resources Group of Stouffville prepared by John Swaigen
33. Letter dated 28 July, 1977, from The Ombudsman to Deputy Minister of the Environment.
34. Notice of hearing on 16 January, 1978 appearing in Toronto "Star", "Globe & Mail", "Sun" and Ontario Gazette
35. Bundle of Schedules showing applications and certificates granted in respect of five landfill sites covered by the Inquiry
36. Diagram showing relationship of Waste Management Inc. to Disposal Services Ltd., and other companies
37. Schedule showing relationship of Messrs Goodhead, Pennington, Solomon, Beck and Paul to various companies covered by Exhibits 7 to 13 inclusive
38. Letter dated 11 January, 1978 from Clerk to Legislative Assembly to P. B. C. Pepper, Q.C.

39. List of search warrants executed
40. Letter dated July 21, 1977, from Ministry of the Environment to Royal Commission
41. Aerial photograph of Maple area showing boundaries of Proposed Landfill, Wells and Water Table Contours
42. Basic Flow Diagram showing applications made under Part V, Environmental Protection Act
43. Branch and Region Organization Charts, Ministry of the Environment, October, 1974
44. Application for Certificate of Approval by Disposal Services Ltd. dated 5 January, 1972 re 96 acres
45. Letter dated 31 January, 1972 Maple Ratepayers Association to Department of Energy & Resources
46. Letter dated 17 February, 1972 from Department of the Environment to Maple Ratepayers Association.
47. Memorandum dated 22 February, 1972 from K. R. Wilk, Waste Management Engineer, Department of the Environment to File.
48. Notice dated 30 March, 1972 from Department of the Environment to Disposal Services Ltd.
49. Letter dated 6 May, 1975 from Goodman & Goodman to Waste Management, Inc.
50. Diagram showing shareholdings of various individuals and corporations in Superior Sand, Gravel and Supplies Ltd.
51. Memorandum dated 11 May, 1973, W. Williamson to J. N. Mulvaney
52. Provisional Certificate of Approval for a Waste Disposal Site granted to Disposal Services Ltd. on 20 June, 1973
53. Transcript of hearing of Environmental Appeal Board on 8 November, 1973
54. By-Law 115-73 of Town of Vaughan passed on 19 November, 1973
55. Application for Certificate of Approval by Disposal Services Ltd. dated 22 November, 1973
56. Letter dated 22 November, 1973, M. H. Chusid to the Hon. James Auld
57. Letter dated 29 November, 1973, the Hon. James Auld to E. R. Good, M.P.P.
58. Notice of Appeal of hearing before Environmental Appeal Board on 8 November, 1973 by M. H. Chusid on behalf of Disposal Services Ltd.
59. Memorandum dated 28 December, 1973, W. Williamson to J. N. Mulvaney enclosing draft memorandum to the Hon. James Auld

60. Letter dated 31 December, 1973, the Hon. James Auld to M. H. Chusid
61. Letter dated 11 January, 1974 from Mayor of Vaughan to the Hon. James Auld
62. Memorandum dated 8 January, 1974 from Legal Services Branch to W. Williamson re Disposal Services Ltd.
63. Memorandum dated 7 February, 1974 from the Hon. James Auld to Secretary of Environmental Hearing Board
64. Appointment for hearing of Appeal of Disposal Services Ltd. in County Court, before His Honour Judge Grossberg
65. Draft letter from the Hon. William Newman to Mayor of Vaughan dated 4 March, 1974
66. Copy of Legislature of Ontario Debates Reports for Thursday, 14 March, 1974
67. Transcript of Environmental Hearing Board proceedings on 15 March, 1974
68. Endorsement of His Honour Judge Grossberg noting discontinuance of appeal, dated 29 April, 1974
69. Draft submission to Environmental Hearing Board by Waste Management Branch re 20 acre site
70. File of correspondence between Stephen Lewis, M.P.P. and the Minister of the Environment with attached summary of situation regarding waste disposal sites in Town of Vaughan
71. Report of Environmental Hearing Board on hearing of application by Disposal Services Ltd. re landfilling in Town of Vaughan
72. Memorandum from Chairman, Environmental Hearing Board to Minister of the Environment dated 8 May, 1974
73. Letter dated 30 May, 1974, from Mayor of Town of Vaughan to Hon. William Newman
74. Letter dated 3 June, 1974, from Dr. J. M. Cameron to the Hon. William Newman
75. Letter dated 28 June, 1974, from the Hon. William Newman to Dr. J. M. Cameron
76. Letter dated 2 July, 1974 from Disposal Services Ltd. to Ministry of the Environment
77. Provisional Certificate of Approval for Waste Disposal Site granted to Disposal Services Ltd. on 31 July, 1974 with attached Notice
78. Order of Ministry of the Environment to Disposal Services Ltd. dated July, 1974
79. Letter dated 16 August, 1974 from Mayor of Vaughan to the Hon. William Newman

80. Letter dated 19 August, 1974 from Dr. J. M. Cameron to the Hon. William Newman
81. Letter dated 6 September, 1974 from the Hon. William Newman to Mayor of Town of Vaughan
82. Letter from Dr. J. M. Cameron to Minister of the Environment dated 4 September, 1974 enclosing letter from the Ministry to Clerk of Township of Hope
83. Letter dated 23 September, 1974 from Minister of the Environment to Dr. J. M. Cameron
84. Application for Certificate of Approval by Superior Sand, Gravel & Supplies Ltd. dated 16 August, 1973
85. Applications for Certificate of Approval by Crawford Allied Industries Ltd., dated 30 March, 1976 19 April, 1974 and 29 November, 1974
86. Application for Certificate of Approval for Resource Recovery Site by Crawford Allied Industries Ltd. dated 9 October, 1974
87. Memorandum dated 27 August, 1973 from W. Williamson to Deputy Minister of the Environment
88. Letter dated 2 September, 1974 from T. F. Connolly to Minister of the Environment
89. Letter dated 3 November, 1975 from the Hon. George Kerr to N. C. Goodhead
90. Memorandum dated 18 February, 1976 from P. S. Isles re meeting with N. C. Goodhead on 16 February
91. Memorandum dated 1 April, 1976 from D. P. Caplice to Secretary, Environmental Hearing Board
92. Letter dated 13 August, 1976 from R. J. Hassard to the Hon. William Davis
93. Memorandum dated 9 September, 1976 from A. V. Giffen to G. R. Trewin
94. Letter dated 17 September, 1976 from the Hon. William Davis to R. J. Hassard
95. Memorandum dated 7 October, 1976 from G. C. Chisamore to P. G. Cockburn
96. Memorandum dated 5 October, 1976 from J. R. McMurray to D. P. Caplice
97. Letter dated 8 November, 1976 from R. J. Hassard to the Hon. George Kerr
98. Letter dated 25 November, 1976 from the Hon. George Kerr to R. J. Hassard
99. Letter dated 29 March, 1977 from N. C. Goodhead to Waste Management Inc.

100. Report to Royal Commission by Touche, Ross & Co.
101. List of political donations, Waste Disposal Ltd.
102. List of non-political donations, Waste Disposal Ltd.
103. Balance Sheet of Disposal Services Ltd. as at 31 December, 1974
104. Analysis of deferred costs in Disposal Services Ltd. balance sheet as at 31 December, 1974
105. Letter dated 11 June, 1975 from D. F. Flynn, Senior Vice President of Waste Management Inc. to M. McConihe of Securities & Exchange Commission
106. Letter dated 29 October, 1975 from E. A. Winkler to N. C. Goodhead
107. Letter dated 28 October, 1975 from N. C. Goodhead to the Hon. George Kerr
108. Newspaper clipping from "Star" of 6 October, 1976
109. Form 10-K of Securities & Exchange Commission regarding Waste Management Inc.
110. Letter dated 2 August, 1974 from P. S. Isles to Town of Vaughan
111. Annual Report of Ministry of the Environment, 1974-75
112. Annual Report of Ministry of the Environment, 1975-76
113. Annual Report of Ministry of the Environment, 1976-77
114. Letter dated 22 May, 1974 from the Hon. William Newman to Clerk of Town of Vaughan
115. Letter dated 22 May, 1974 from D. P. Caplice to Disposal Services Ltd.
116. Large aerial photograph of Maple area
117. Letter dated September 22, 1976 from the Hon. William Davis to R. J. Hassard
118. Letter dated 27 August, 1976 from R. J. Hassard to the Hon. George Kerr
119. Letter dated 24 September, 1975 from the Hon. George Kerr to R. J. Hassard
120. Letter dated 10 May, 1976 from R. J. Hassard to the Hon. George Kerr
121. Letter dated 1 June, 1976 from Ministry of the Environment to R. J. Hassard
122. Memorandum of points for discussion re Maple area proposed landfill site, dated 29 October, 1976 with attached map and newspaper clipping
123. Location map for Superior Sand, Gravel & Supplies Ltd. proposed landfill site
124. Letter dated 30 September, 1974 from Dr. J. M. Cameron to the Hon. William Newman

125. Letter dated 16 May, 1977 from Dr. J. M. Cameron to Chairman of Environmental Assessment Board
126. Letter dated 12 May, 1969 from R. W. Bremner Co. Ltd. to W. B. Drowley
127. Provisional Certificate of Approval granted to R. W. Bremner Co. Ltd., on 10 August, 1971
128. Provisional Certificate of Approval granted to R. W. Bremner Co. Ltd., on 8 November, 1971
129. Provisional Certificate of Approval granted to R. W. Bremner Co. Ltd., on 21 July, 1972
130. Provisional Certificate of Approval granted to York Sanitation Co. Ltd. on 23 July, 1973
131. Provisional Certificate of Approval granted to York Sanitation Co. Ltd., on 21 January, 1974
132. Memorandum dated 29 March, 1974 from M. H. Laengner, Inspector, Central Region, to File
133. Letter dated 18 April, 1974 from Mingay & Associates to Ministry of the Environment
134. Letter dated 2 May, 1974 from Mingay & Associates to Ministry of the Environment
135. Letter dated 7 May, 1974 from Mingay & Associates to Ministry of the Environment
136. Status Report dated 10 May, 1974 re York Sanitation Co. Ltd. site in Whitchurch-Stouffville
137. Report by P. S. Isles re York Sanitation Co. Ltd. site in Whitchurch-Stouffville.
138. Order from Ministry of the Environment to York Sanitation Co. Ltd., dated 23 May, 1974
139. Letter dated 12 June, 1974 from York Sanitation Co. Ltd. to Ministry of the Environment
140. Letter dated 13 June, 1974 from the Hon. William Newman to the Secretary, York County Federation of Agriculture
141. Letter dated 26 June, 1974 from Mingay & Associates to Mayor of Whitchurch-Stouffville
142. Letter dated 26 June, 1974 from Mingay & Associates to Mayor of Whitchurch-Stouffville
143. Engineer's Report dated 8 July, 1974 from P. S. Isles re York Sanitation site No. 4
144. Memorandum dated 8 July, 1974 from P. S. Isles to L. McCaffrey, Legal Services Branch
145. Letter dated 29 July, 1974 from Mingay & Associates to the Hon. Robert Welch

146. Letter dated 30 July, 1974 from York Sanitation Co. Ltd. to Ministry of the Environment enclosing daily dump record re site No. 4
147. Letter dated 19 August, 1974 from P. S. Isles to Mingay & Associates
148. Letter from G. R. Trewin, Central Region, to R. W. Black, Mingay & Associates
149. Memorandum dated 5 September, 1974 from Legal Services Branch to Ministry of the Attorney General
150. Letter dated 13 September, 1974 from D. P. Caplice to Secretary, Environmental Hearing Board
151. Brief to the Environmental Hearing Board by Central Region staff of Ministry of the Environment
152. Application for Certificate of Approval by York Sanitation Co. Ltd., dated 14 June, 1974
153. Report of Environmental Hearing Board on hearing of application by York Sanitation Co. Ltd. dated 8 October, 1975
154. By-Law 74-45 of Corporation of Town of Whitchurch-Stouffville passed 22 October, 1974
155. Letter from John Swaigen to the Hon. William Newman dated 13 November, 1974
156. Letter dated 19 November, 1974 from the Hon. William Newman to John Swaigen
157. Letter dated 29 November, 1974 from M. H. Chusid to the Hon. William Newman
158. Letter dated 4 December, 1974 from Solicitor for Town of Whitchurch-Stouffville to the Hon. William Newman
159. Letter dated 23 December, 1974 from the Hon. William Newman to M. H. Chusid
160. Letter dated 23 December, 1974 from the Hon. William Newman to Solicitor, Town of Whitchurch-Stouffville
161. Memo. dated 15 January, 1975 from Legal Services Branch to the Hon. William Newman
162. Letter dated 17 April, 1975 from Clerk of Town of Whitchurch-Stouffville to the Hon. William Newman with attached copy of By-Law 75-33
163. Letter dated 30 April, 1975 from P. G. Cockburn to Clerk of Town of Whitchurch-Stouffville
164. Letter dated 10 January, 1976 from John Swaigen to D. P. Caplice
165. Memorandum dated 9 February, 1976 from P. G. Cockburn to J. N. Mulvaney, Legal Services Branch
166. Inspection Report by P. S. Isles on York Sanitation Co. Ltd. No. 4 site

167. Status Report dated 13 July, 1976 on York Sanitation Co. Ltd., No. 4 site
168. Memorandum dated 9 August, 1976 from J. R. McMurray to D. P. Caplice
169. Letter dated 9 July, 1976 from Frank A. Rovers & Associates Ltd., to P. S. Isles
170. Letter dated 29 July, 1976 from Frank A. Rovers & Associates to P. S. Isles
171. Provisional Certificate of Approval granted to York Sanitation Co. Ltd., on 2 September, 1976
172. Notice from Ministry of the Environment to York Sanitation Co., Ltd., dated 2 September, 1976
173. Memorandum dated 13 October, 1976 from A. V. Giffen to G. R. Trewin, Ministry of the Environment
174. Memorandum dated 6 December, 1976 from P. S. Isles to L. McCaffrey, Legal Services Branch
175. Notice of Revocation to York Sanitation Co. Ltd., dated 22 December, 1976
176. Information charging York Sanitation Co. Ltd., with violations of Environmental Protection Act
177. Memorandum dated 17 March, 1977 from Linda McCaffrey to P. R. Tovey
178. Letter dated 18 March, 1977 from P. R. Tovey to R. E. Stackhouse, York Sanitation Co. Ltd.
179. Memorandum dated 22 April, 1977 from P. R. Tovey to J. N. Mulvaney
180. Memorandum dated 13 May, 1977 from Legal Services Branch to the Hon. George Kerr
181. Memorandum dated 19 May, 1977 from Linda McCaffrey to File re York Sanitation Co. Ltd.
182. Information charging York Sanitation with offences under the Environmental Protection Act, with certificate of conviction dated 24 June, 1977
183. Newspaper clipping from "Globe & Mail" of 29 June, 1977
184. File of Weights, Site Reports and Correspondence in respect of Whitchurch-Stouffville Site No. 4, 1974
185. File of Weights, Site Reports and Correspondence in respect of Whitchurch-Stouffville Site No. 4, 1975
186. File of Weights, Site Reports and Correspondence in respect of Whitchurch-Stouffville Site No. 4, 1976
187. Report entitled "Funding for an Alternative Water Supply and Site Closure, at York Sanitation Co. Ltd. Site No. 4" by Frank A. Rovers & Associates Ltd.

188. Site Inspection Report on York Sanitation Co. Ltd. Site No. 4 dated 26 September, 1974
189. Site Inspection Report on York Sanitation Co. Ltd. Site No. 4 dated 31 October, 1974
190. Site Inspection Reports on York Sanitation Co. Ltd. Site No. 4 dated June 25, July 8, July 16, July 26 and August 30, 1974
191. Site Inspection Reports on York Sanitation Co. Ltd., Site No. 4 dated 13 December, 1974, 8 January, 17 March, 3 June, 15 July and 4 November, 1975
192. Report on York Sanitation Co. Ltd. Site No. 4 with summary of violations in 1976
193. Bundle of Site Inspection Reports on York Sanitation Co. Ltd. Site No. 4 dated August 25, September 29, October 18, October 22, October 29, November 1, November 5 and November 10, 1976
194. Letter dated 13 December, 1976 from Conestoga-Rovers & Associates to P. S. Isles
195. Newspaper clipping from Whitchurch-Stouffville "Examiner" of 6 February, 1975
196. Plan of property owned and controlled by Disposal Services Ltd., dated August, 1973
197. Transcript of proceedings before Environmental Hearing Board on May 1, 1975
198. Letter dated 14 September, 1976 from Ministry of the Environment to Clerk-Treasurer, Town of Whitchurch-Stouffville
199. Memorandum dated 28 December, 1971 of Royal Trust Co.
200. Deposit slip of Royal Trust Co., Account No. 5000 dated August 13, 1974
201. 2 pages from pass-book of Royal Trust Co., covering period from 10 April, 1974 to November 19, 1974
202. Letter dated 9 July, 1974 from W. M. Kelly to Royal Trust Co., with enclosure
203. Letter dated 1 August, 1974 from W. M. Kelly to Royal Trust Co., with enclosure
204. Letter dated 8 August, 1974 from W. M. Kelly to Royal Trust Co., with enclosure
205. Letter dated 28 August, 1974 from W. M. Kelly to Royal Trust Co., with enclosure
206. Purchase Order No. 18472 of Waste Management Inc. to Aurora Scale Service Ltd.
207. Work Order of Aurora Scale Service Ltd., dated 2 October, 1974
208. Transcript of proceedings before Environmental Hearing Board on 26 March, 1974

209. List of members of Environmental Assessment Board with dates of appointment
210. Schedule showing members of Environmental Assessment Board sitting at various times
211. Transcript of proceedings on a site inspection of York Sanitation Co. Ltd. Site No. 4 on 12 May, 1975
212. Transcript of proceedings before Environmental Assessment Board on 26 January, 1977
213. Memorandum dated 14 November, 1975 from P. G. Cockburn to Assistant Deputy Minister, Ministry of the Environment
214. Plan showing location of weigh-scales in area adjacent to Whitchurch-Stouffville landfill site
215. Letter dated 22 March, 1974 from the Hon. William Newman to Mayor of Vaughan
216. Plan superimposed on aerial photograph showing York Sanitation Co. Ltd. Site No. 4
217. Sheet from share register of Verona Investments Ltd. headed "John Michael De Toro"
218. Sheet from share register of Verona Investments Ltd. headed "Aurora Canadese S.A."

Appendix "B"

The witnesses called before the Commission were as follows:

The Hon. James Alexander AULD
Lawrence BECK
John Steven BERGERSON
Robert Wilson BLACK
Joseph Gordon Arnold BRIGDEN
Dean Louis BUNTROCK
Dennis Patrick CAPLICE
David Sundell CAVERLY
James McIntyre CAMERON
Thomas Francis CONNOLLY
Norman Charles GOODHEAD
Richard James HASSARD
Paul Stewart ISLES
William McDonough KELLY
The Hon. George Albert KERR
Det/Insp. Alistair Kenneth MACLEOD, O.P.P.
Douglas Colton MATTHEWS
Ian McKERRACHER
Linda Catherine McCAFFREY
The Hon. William Gould NEWMAN
Det/Sgt. Louis OKMANAS, O.P.P.
Helga PAIDE
Robert Anthony PAUL
John Leslie PENNINGTON
Gordon Howard RATCLIFFE
Robert RIDOLFO
David Philip ROSS
Phineas SCHWARTZ
Eric Joseph SHEPPEY
Max SOLOMON
Cpl. Peter McFarland THOMSON, O.P.P.
Garnet Albert WILLIAMS
Wesley WILLIAMSON
Harry WOLFE

Appendix "C"

LIST OF PERSONS INTERVIEWED, OTHER THAN WITNESSES.

1. M. BAKER,
   Land owner, Whitchurch-Stouffville
2. M. H. CHUSID,
   Barrister and solicitor
3. B. CRAWFORD,
   Chief of Police, Regional Municipality of York
4. D. DAY,
   Deputy Works Commissioner (Sanitation), Borough of Etobicoke
5. B. DUNFORD,
   Deputy Commissioner of Works, Borough of York
6. M. D. GODFREY,
   Solicitor, Ministry of Consumer & Commercial Relations
7. F. HORGAN,
   Deputy Commissioner of Works, Metropolitan Toronto
8. K. HUTCHINSON,
   Landowner, Whitchurch-Stouffville
9. L. JOHNSON,
   Reporter, Richmond Hill "Liberal"
10. D. A. JOYNT,
    Executive Secretary, Commission on Election Contributions and Expenses
11. H. LERMAN,
    President, Crawford Allied Industries Ltd.
12. A. LIPTON,
    Secretary-Treasurer, Crawford Allied Industries Ltd.
13. N. L. LORENZETTI,
    Barrister and solicitor
14. L. MacMILLAN,
    Landowner, Maple
15. J. J. MARLOW,
    Director of Operations, Borough of North York
16. J. D. MATHEWS,
    Director of Operations, Works Department, East York
17. P. MINGAY,
    Solicitor, Town of Whitchurch-Stouffville

18. F. B. MUNROE,
    Witness at Environmental Assessment Board hearing at Stouffville
19. T. D. NEAR,
    Director of Sanitation, City of Toronto
20. T. O'DONAHUE,
    Member, Metropolitan Toronto Council
21. P. POULSSON,
    Director of Sanitation, Scarborough
22. F. M. REDELMEIR,
    Landowner, Maple
23. J. H. SANDERS,
    Resident, Stouffville
24. R. SHUERT,
    Scale operator, Commercial Sand & Gravel Co., Whitchurch-Stouffville

Appendix "D"

THE STATED CASE

1. The Commissioner's Reasons given at the hearing on October 11, 1977
2. The case stated to the Divisional Court
3. Reasons for judgment of the Divisional Court
4. Order of the Divisional Court

COMMISSIONER'S REASONS
delivered at the hearing on October 11, 1977

THE COMMISSIONER: Mr. John Z. Swaigen, who is general counsel for the Canadian Environmental Law Association, has today renewed an application that was made at the hearings of this Commission on June 3rd of this year, and that is for standing under the terms of Section 5 of the Public Inquiries Act, 1971, for the same persons, to wit, the Preserve Our Water Resources Group, and individually Mr. J. H. Sanders of the Town of Whitchurch-Stouffville, Mr. Keith Hutchinson of the Town of Whitchurch-Stouffville and Mr. Merlyn Baker of the same municipality.

On that previous occasion, after listening to Mr. Swaigen's argument and what was said in reply to it by Mr. Pepper as Counsel for the Commission, I denied such standing on the grounds that what concerned these applicants was not relevant to my terms of inquiry.

I should be the last person to say that what concerned them does not concern me; as Mr. Pepper said this morning, as a citizen and as an owner of property, one is bound to sympathize with people who feel that the privacy of their close is threatened by what they regard as oppressive activities. But, as I hope I will make clear in the course of these reasons, I think there is a very real danger that an inquiry under this Statute can be brought to nought, halted in all its reasonable endeavours to fulfil the terms of reference which it is bound to meet in exercising the functions entrusted to it by Order-in-Council.

Now this is not necessarily Mr. Swaigen's fault, or the fault of the people he represents. I may say that under the Public Inquiries Act as it existed on the last occasion that I had any connection with an inquiry

of this type, the procedure was really in the hands of the Commission. And that is why I think it was always felt necessary, or frequently felt necessary, to appoint a judge of this Court, and sometimes of the County Court, to preside, because it was felt that he would, as a result of his experience in courts, conduct the inquiry as fairly and impartially as it could be done.

In the case of Atlantic Acceptance, where it took some two years to call the evidence, which was copious in the extreme and had over 5,000 exhibits, a mountainous library, and another two years to write the report, I can, I think fairly, say that it could not have been done had the interpretation given by Mr. Swaigen to Section 5 of the Public Inquiries Act, 1971, prevailed. And I am not going to say that Mr. Swaigen is wrong in his position. I am going to say merely that I think he is wrong, and I am going to submit our respective views to the Court.

But in any event, progress being what it is and reformers being what they are, in 1971 a new Public Inquiries Act was enacted, and Section 5 of it reads as folows:

> **"A Commission shall accord to any person who satisfies it that he has a substantial and direct interest in the subject matter of its inquiry an opportunity during the inquiry to give evidence and to call and examine or to cross-examine witnesses personally or by his counsel on evidence relevant to his interest."**

And then the second sub-section, rather significantly I think, reads this way:

> **"No finding of misconduct on the part of any person shall be made against him in any report of a commission after an inquiry unless that person had reasonable notice of the substance of the misconduct alleged against him and was allowed full opportunity during the inquiry to be heard in person or by counsel."**

I think there is some significance in the bracketing of those two sub-sections together because, in my view, the Legislature meant, when referring to persons who have a substantial and direct interest in the subject matter of the inquiry, the people against whom the allegations or findings of misconduct might be made.

To allow anybody to come in and say, "Well, I feel badly about this, I think that I can bring to bear some aspects of the matter which Counsel for the Commission would not necessarily take into account", and to call that a substantial and direct interest and to give standing to anybody in that position would thwart the completion, prevent the completion perhaps and certainly thwart the commencement of any inquiry of this nature under this Statute.

However, I do recognize the fact that there is an ambiguity. I put

it this way, I recognize that someone else may feel that there is an ambiguity in the matter and it is in the public interest that this Statute, which was launched after the expression of high hopes about the salutary nature of the restrictions indeed imposed upon the Commissioner, should be clearly interpreted. And the Court should say whether or not the type of application, or shall I say the type of applicant in the position of Mr. Swaigen's clients in the absence of any allegation made against them of corruption, have a substantial and direct interest in the subject matter of the inquiry, or even given an allegation of corruption, they are entitled to separate representation by Counsel, when I should have thought that the long-standing procedure of bringing forward evidence of this type to the attention of the Commission Counsel would have been relied upon.

It seems to me that Commission Counsel does become just one of a number of contenders at the board, as it were, if these words, "a substantial and direct interest" are interpreted as "interest" in the investigation rather than as a party affected by the investigation. And I may say that the old Public Inquiries Act used to talk about persons affected in this connotation, and also under the section which protected them from giving self-incriminatory evidence. I seriously suggest that an inquiry of the magnitude of the one I refer to, that into the affairs of Atlantic Acceptance Corporation, could not have been conducted in this way. What happened was that after Commission Counsel had called a great deal of evidence, I advised all parties that a day would be set when they could call their own witnesses, either people affected by the allegations or anybody at all who felt he had an interest. The day came and not one person actually appeared to call any evidence or make any submissions. I agree that some of the parties affected were in prison at the time; this may have been a handicap. But others were not, others had come out.

Consequently I have to say to Mr. Swaigen that even though I have given fresh attention to the application in the light of what he has said about allegations of impropriety (little of which appears, in my opinion, in the affidavits with which he has furnished the Commission) the application for standing under Section 5 of the Public Inquiries Act, is again refused. Now, it may be thought logical that, having taken that position, I should refuse to state the case. Mr. Pepper has referred to the fact that an application for stating a case is in the wind. Perhaps you can confirm that, Mr. Swaigen. Are you asking the Commission to state a case to the Divisional Court?

MR. SWAIGEN: Yes, Mr. Commissioner, I am requesting that, pursuant to Section 6 of the Public Inquiries Act, the Commission state a case to the Divisional Court.

THE COMMISSIONER: Yes, that section is as follows, at least the first sub-section reads:

> **"Where the authority to appoint a commission under this Act or the authority of a commission to do any act or thing proposed to be done or done by the commission in the course of its inquiry is called into question by a person affected. . . ."**

and here is the old phrase

> **" . . . the commission may of its own motion or upon the request of such person state a case in writing to the Divisional Court setting forth the material facts and the grounds upon which the authority to appoint the commission or the authority of the commission to do the act or thing are questioned."**

The act or thing here, I assume, is the refusal to grant the standing requested.

Then sub-section 2:

> **"If the commission refuses to state a case under subsection 1, the person requesting it may apply to the Divisional Court for an Order directing the commission to state such a case."**

Now, you might think that possessed with the urgent necessity to get ahead with the evidence in this case, I might consistently with the view I have taken about the nature of Mr. Swaigen's application, refuse to state the case under subsection 3 of Section 6.

Mr. Swaigen is aware, as anybody else here, that the stating of a case to the Divisional Court brings these proceedings virtually to a halt, because witnesses cannot be called, generally, in the case of the activities of the disposal companies and be examined and cross-examined by Counsel who have standing, if somebody who has not got standing is applying to the Court for it. Obviously that would require repetition of calling witnesses if he succeeds. And here I should read subsection 4 of Section 6 which says:

> **"Pending the decision of the Divisional Court on a case stated under this Section, no further proceedings shall be taken by the commission with respect to the subject matter of the stated case but it may continue its inquiry into matters not in issue in the stated case."**

I have been advised by Counsel that there may be a few trifles of evidence which will escape the entangling net of that subsection of Section 6. But, to all intents and purposes, our proceedings are at an end when a case is stated of the type applied for by Mr. Swaigen, until it is decided by the Divisional Court first, but not necessarily last; Mr. Swaigen may be persuaded by the energy of his clients to go to the Court of Appeal, or even Mr. Pepper may, as a result, advise that such a step is required by him.

So I do not think there is anything to be gained in making Mr. Swaigen carry the ball, if I may say so, and go and get an Order from the Divisional Court compelling the Commission to state the case. Mr. Pepper advises against it, and I think very properly; I think there is sufficient need to have the provisions of Section 5, subsection 1 in this Statute clarified so that other commissions who may (and I say this in the kindliest way possible) be asked to become a forum for the advertising of causes, however good, will know exactly where the line must be drawn.

IN THE SUPREME COURT OF ONTARIO

IN THE MATTER OF THE PUBLIC INQUIRIES ACT, 1971 S.O. 1971, Chapter 49

and

IN THE MATTER OF A ROYAL COMMISSION PROCLAIMED ON THE 15TH DAY OF MAY, 1977, TO INVESTIGATE AND REPORT UPON CERTAIN ASPECTS OF THE CONDUCT OF WASTE MANAGEMENT INCORPORATED AND OTHER COMPANIES AND PERSONS.

CASE STATED TO THE DIVISIONAL COURT
BY THE COMMISSIONER
THE HONOURABLE S. H. S. HUGHES.

A.

1. By the said proclamation I was appointed Commissioner and my terms of reference as set forth therein require me "to inquire into any wrongdoing or impropriety or any improper influence being brought to bear on members of the Ontario Government, or its Public Service, on the part of officials of Waste Management Inc., Disposal Services Ltd., and affiliated Companies, or of any other individual or individuals, in respect of applications for land fill sites by the said Companies or affiliates, or any agency thereof, since 1971 to the Ministry of the Environment or the Department of the Environment or the Department of Energy or Resources Management and to report thereon and to make such recommendations to the Lieutenant Governor in Council as the Commissioner may deem fit".

2. By the said proclamation Part III of the Public Inquiries Act, 1971, was ordered to apply to this inquiry.

3. At the third public hearing of the Commission held on October 11th, 1977 at 10 o'clock in the forenoon at which time Counsel for the Commission, Mr. P. B. C. Pepper, Q.C., and Mr. P. S. A. Lamek, were

to commence leading evidence acquired in accordance with my terms of reference and over several months of investigation, Mr. John Z. Swaigen, generally described as counsel for the Canadian Environmental Law Association, and on this occasion representing an organisation styled the Preserve Our Water Resources Group, and J. H. Sanders, Keith Hutchinson and Merlyn Baker of the Town of Whitchurch-Stouffville, made an application for standing for these persons as having a substantial and direct interest in the subject matter of the inquiry and thus entitled to be given an opportunity to give evidence and to call and examine or cross-examine witnesses on evidence relevant to their interests in accordance with the terms of s-s (1) of s. 5 of the said Public Inquiries Act, 1971, similar to one which had first been made at the opening hearing of the Commission on June 3rd of this year on behalf of some though not all of these applicants.

4. As will appear from Volumes 1 and 3 of the transcript of the proceedings of this Commission which I hereby make part of this Stated Case, both applications were refused by me on June 3rd, and on October 11th. The exhibits filed on October 11th are hereby made part of this Stated Case.

5. Upon the refusal of the application of October 11th, Mr. Swaigen asked me to state a case to this Honourable Court pursuant to the provisions of s. 6 of the said Public Inquiries Act, 1971 as provided for in s-s. (1) of s. 6 thereof so that it might hear and determine in a summary manner the questions raised as provided for in s-s. (3) thereof.

B.

Was I right in refusing the application made on behalf of the Preserve Our Water Resources Group and Messrs. J. H. Sanders, Keith Hutchinson and Merlyn Baker, for an opportunity during the inquiry to give evidence and to call and examine or to cross-examine witnesses personally or by their counsel on evidence relevant to their interests because the said group and these persons have not satisfied me that they have a substantial and direct interest in the subject matter of the inquiry since it is clear from their affidavits and all annexures thereto that their interest is in the extent to which the use of garbage as land fill in abandoned gravel pits in the vicinity of human habitation may damage the water supply and generally affect the amenities of habitations and in no substantial or direct manner in the subject matter set forth in my terms of reference which concerns applications for land fill sites and any wrongdoing in respect of them?

IN THE SUPREME COURT OF ONTARIO
DIVISIONAL COURT

Lerner, Henry, and Goodman, JJ.

IN THE MATTER OF THE PUBLIC INQUIRIES ACT, 1971, S.O. 1971, Chapter 49;	*I. G. Scott, Q.C.*, for the applicant
AND IN THE MATTER OF A ROYAL COMMISSION PROCLAIMED ON THE 15th DAY OF MAY, 1977, TO INVESTIGATE AND REPORT UPON CERTAIN ASPECTS OF THE CONDUCT OF WASTE MANAGEMENT INCORPORATED AND OTHER COMPANIES AND PERSONS	*D. W. Brown*, for the Attorney General of Ontario and the Ministry of Environment (respondents) *P. B. C. Pepper, Q.C.*, for the Commissioner *Heard: November 1 and 2, 1977.*

LERNER, J. (Orally):—

At the outset, we wish to record that Mr. Pepper, who is counsel for the Royal Commission, was invited to participate in this hearing and to make submissions to assist the court.

We have before us for consideration a case stated by the Commissioner, pursuant to Section 6(1) of *The Public Inquiries Act*, 1971. It is our view of these proceedings that the learned Commissioner, having regard to the manner in which he prepared the stated case, was seeking the direction of the court on a matter that he considered to be one of ambiguity under the statute, calling for a decision of the court to put the matter beyond doubt in the public interest. It was agreed that the subject matter of the inquiry concerns allegations of corruption and not pollution of the environment.

The question requiring the answer of the court submitted by the Commissioner is as follows:

> **"Was I right in refusing the application made on behalf of the Preserve Our Water Resources Group and Messrs. J. H. Sanders, Keith Hutchinson and Merlyn Baker, for an opportunity during the inquiry to give evidence and to call and examine or to cross-examine witnesses personally or by their counsel on evidence relevant to their interests because the said group and these persons have not satisfied me that they have a substantial and direct interest in the subject matter of the inquiry since it is clear from their affidavits and all annexures thereto that their interest is in the extent to which the use of garbage as land fill in abandoned gravel pits in the vicinity**

of human habitation may damage the water supply and generally affect the amenities of habitations and in no substantial or direct manner in the subject matter set forth in my terms of reference which concerns applications for land fill sites and any wrongdoing in respect of them?"

We have concluded that the question is to be answered in the negative, excepting as it relates to Messrs. Sanders and Baker.

The issue of law and jurisdiction, with which we are concerned, arises out of the interpretation of Section 5 of *The Public Inquiries Act*, 1971, which states:

"5(1) A commission shall accord to any person who satisfies it that he has a substantial and direct interest in the subject matter of its inquiry an opportunity during the inquiry to give evidence and to call and examine or to cross-examine witnesses personally or by his counsel on evidence relevant to his interest.

5(2) No finding of misconduct on the part of any person shall be made against him in any report of a commission after an inquiry unless that person had reasonable notice of the substance of the misconduct alleged against him and was allowed full opportunity during the inquiry to be heard in person or by counsel."

The view taken by the learned Commissioner, as revealed in the stated case, is that the persons who are contemplated in Section 5(1) as having a "substantial and direct interest in the subject matter of its inquiry" are those to whom subsection 2 applies. In our opinion, subsection 1 is not so confined. The purpose of subsection 2 is to be given effect at the end of the inquiry, and is to protect a person against whom the commission contemplates an allegation of misconduct in the findings and report of the commission, against such a finding unless he had reasonable notice of the substance of the allegation and was allowed full opportunity to be heard. Clearly, such a person, once he is identified in the course of the inquiry, is a person who would fall within the provisions of subsection 1 as having a substantial and direct interest in the subject matter of the inquiry; but it is our opinion that depending on the terms of reference of the commission and the relationship of persons concerned who seek to be given "standing" before the commission, there will, undoubtedly, be persons having such an interest who would not be persons against whom a finding of misconduct may ultimately be made. Section 5(1) therefore embraces a wider class of person than those mentioned in subsection 2.

Subsection 1 requires the commission to accord to any person who satisfies it that he has a substantial and direct interest in the subject matter of the inquiry, an opportunity to give evidence and to call and examine witnesses or cross-examine other witnesses who testify. A person having a substantial and direct interest in the subject matter of the inquiry, therefore, is by the mandatory provision of subsection 1, to be

accorded "standing" before the commission and, in effect, to participate as an independent party. This is a right which has important implications for such a person in that he is not dependent upon the decisions of commission counsel in the placing of relevant evidence before the commission.

The learned Commissioner, therefore, in our opinion, misconstrued the meaning of subsection 5(1) and, on the basis of what we hold to be an incorrect view of that provision, refused to accord standing to the applicants. This was a jurisdictional error.

The authority of this court to deal with the matter is set out in Section 6(1) of the Act which, in 1971, replaced a corresponding provision in the former Act. Section 6 of the present Act provides, in part, as follows:

> **"6.(1) Where the authority to appoint a commission under this Act or the authority of a commission to do any act or thing proposed to be done or done by the commission in the course of its inquiry is called into question by a person affected, the commission may of its own motion or upon the request of such person state a case in writing to the Divisional Court setting forth the material facts and the grounds upon which the authority to appoint the commission or the authority of the commission to do the act or thing are questioned.**
> **6.(3) Where a case is stated under this section, the Divisional Court shall hear and determine in a summary manner the question raised."**

In Re *Bortolotti et al. and Ministry of Housing et al.*, (1977), 15 O.R. (2d) 617, the Court of Appeal considered at length the questions whether the rulings of a commission are reviewable by the Divisional Court on a stated case, and after setting out the power of review by the Divisional Court, the Court of Appeal stated at p. 625:

> **"An error of jurisdiction might also arise by reason of the denial of a statutory right. Under s. 5(1) of the Public Inquiries Act, 1971, a person who satisfies the Commission that he has a substantial and direct interest in the subject-matter of the inquiry is entitled to give evidence and to call and cross-examine witnesses relevant to his interest. The exclusion of such evidence by the Commission would be a denial of a statutory right amounting to an error of jurisdiction. . . . ."**

Other authorities are referred to in the reasons of the Court of Appeal, but we do not consider it necessary to refer to them. We believe this to be a correct statement of the law, although in the context of a review of a ruling on evidence by the commission, and we adopt it as applicable to the case before us.

I now turn to the particular issue in this application so far as the question to be answered embraces the refusal of the Commissioner to accord "standing" to the applicants. While it is the Commissioner who

is to be satisfied, it is clear from the way in which the question is framed that this issue, apart from the interpretation of Section 5(1) to which I have referred, requires an answer by the Court.

Mr. Scott's submissions on behalf of the applicants may be summarized as follows:

> **1) The applicants participated in the process under review and, therefore, will have information to offer to the commission. What is here referred to is the fact disclosed in a stated case and elaborated in argument before us that the applicants were accorded standing before the Environmental Hearing Board, which was part of the process resulting in the ultimate issue of a licence to enlarge a garbage dump (known as a land fill site) in Whitchurch-Stouffville, where the applicants all reside;**
> **2) The applicants have been affected by the result of the process under review and, therefore, have a substantial and direct interest in that review and the conclusions drawn therein;**
> **3) The applicants have made allegations of impropriety in connection with the process under review, which impropriety may be related to the alleged corruption which forms the subject matter of the public inquiry and, therefore, have a direct and substantial interest in proceedings which may dispose of those allegations.**

In considering whether the applicants have a substantial and direct interest in the subject matter, we find that two points emerge.

Mr. Hutchinson owns land adjacent to the land fill site and alleges that the enlargement of that site endangers his water supply and increases pollution on his land. In our opinion, on a proper interpretation of Section 5(1) of the Act, the Commissioner ought to have been satisfied that Mr. Hutchinson has a substantial and direct interest in allegations of corruption which, if proven, may have affected the granting of a permit allowing the enlargement of the adjacent land fill site, which alleged corruption may have affected the actions and decisions of persons in authority in failing to enforce laws and regulations controlling the operation of the land fill site to his detriment. We consider that that is sufficient to accord him standing before the commission.

The second point is with respect to POWR an unincorporated association of concerned citizens, known as "Protect Our Water Resources". All the individual applicants are principal officers of that organization. POWR collectively, and the individual applicants, were accorded standing before the Environmental Hearing Board, and made submissions. They allege that they are dissatisfied with the fairness of the hearing conducted by the Board, and have called the integrity of that hearing into question. It is our opinion that, if the allegation of corruption, which is the subject matter of the commission's inquiry, could have had an influence on the conduct of the hearing and the decision of the Board in framing its recommendations to the Minister, they have a

direct and substantial interest in the subject matter of the inquiry. Their interest lies in the integrity of the inquiry by the Board and its possible impairment by the influence of the alleged corruption.

We, therefore, agree with Mr. Scott's submissions outlined above, and consider that the Commissioner ought to have been satisfied on a proper interpretation of the statutes and the relationship of POWR to the subject matter of the inquiry, that they had the substantial and direct interests necessary to give them "standing" under Section 5(1) of the Act.

It is to be observed that POWR was treated in argument before us as an entity, although in law it is merely a group of individuals. It is our understanding that Messrs. Sanders and Baker were involved in the inquiry before the Board and are so involved in the commission as principal officers of the POWR group, and it is our opinion that status should be accorded to the group as such, collectively. It is for this reason that, in our opinion, Messrs. Sanders and Baker should not be accorded separate status in their individual or personal capacities. While at a former time they may have had a more direct connection with what is now the subject matter, as we understand it, that connection no longer exists. Mr. Sanders is described merely as resident of the Town of Whitchurch-Stouffville, and Mr. Baker is said to have formerly owned and farmed land abutting the land fill site, and was a member of the municipal council of Whitchurch-Stouffville, but that is no longer the case. Moreover, we consider that POWR should be represented before the Commission by one person, with or without counsel.

In the result, as was stated at the outset, the Commissioner is here seeking direction from the court. Respectfully, we find that he has stated a case which, on the material, clearly sets out the problems for which he seeks that direction. The answer, therefore, to the stated case is in the negative, excepting as it relates to Messrs. Sanders and Baker. This is not a case for costs.

Released: November 9/77.

"Mayer Lerner, J"

"D. H. W. Henry, J"

"A. Goodman, J"

IN THE SUPREME COURT OF ONTARIO

THE HONOURABLE MR. JUSTICE LERNER	)	WEDNESDAY, THE 2nd DAY
THE HONOURABLE MR. JUSTICE HENRY	)	OF
THE HONOURABLE MR. JUSTICE GOODMAN	)	NOVEMBER, 1977

IN THE MATTER OF THE PUBLIC INQUIRIES ACT, S.O. 1971, c. 49;
AND IN THE MATTER OF THE ROYAL COMMISSION PROCLAIMED ON THE 15TH DAY OF MAY, 1977, TO INVESTIGATE AND REPORT UPON CERTAIN ASPECTS OF THE CONDUCT OF WASTE MANAGEMENT INCORPORATED AND OTHER COMPANIES AND PERSONS.

(Seal)

CERTIFICATE OF ORDER

THIS IS TO CERTIFY that upon motion made unto this Court on Tuesday, the 1st day of November 1977, and again this day, on behalf of the Preserve our Water Resources Group and Messrs. J. H. Sanders, Keith Hutchinson and Merlyn Baker, by way of a case stated to this Court by the Commissioner herein, the Honourable S. H. S. Hughes, on the following question:

> **Was I right in refusing the application made on behalf of the Preserve Our Water Resources Group and Messrs. J. H. Sanders, Keith Hutchinson, and Merlyn Baker, for an opportunity during the inquiry to give evidence and to call and examine or to cross-examine witnesses personally or by their counsel on evidence relevant to their interests because the said group and these persons have not satisfied me that they have a substantial and direct interest in the subject matter of the inquiry since it is clear from their affidavits and all annexures thereto that their interest is in the extent to which the use of garbage as land fill and abandoned gravel pits in the vicinity of human habitation may damage the water supply and generally affect the amenities of habitations and in no substantial or direct manner in this subject matter set forth in my terms of reference which concerns applications for land fill sites and any wrongdoing in respect of them?**

and upon hearing read the case stated by the Commissioner, the proceedings herein, and upon hearing Counsel for the Preserve Our Water

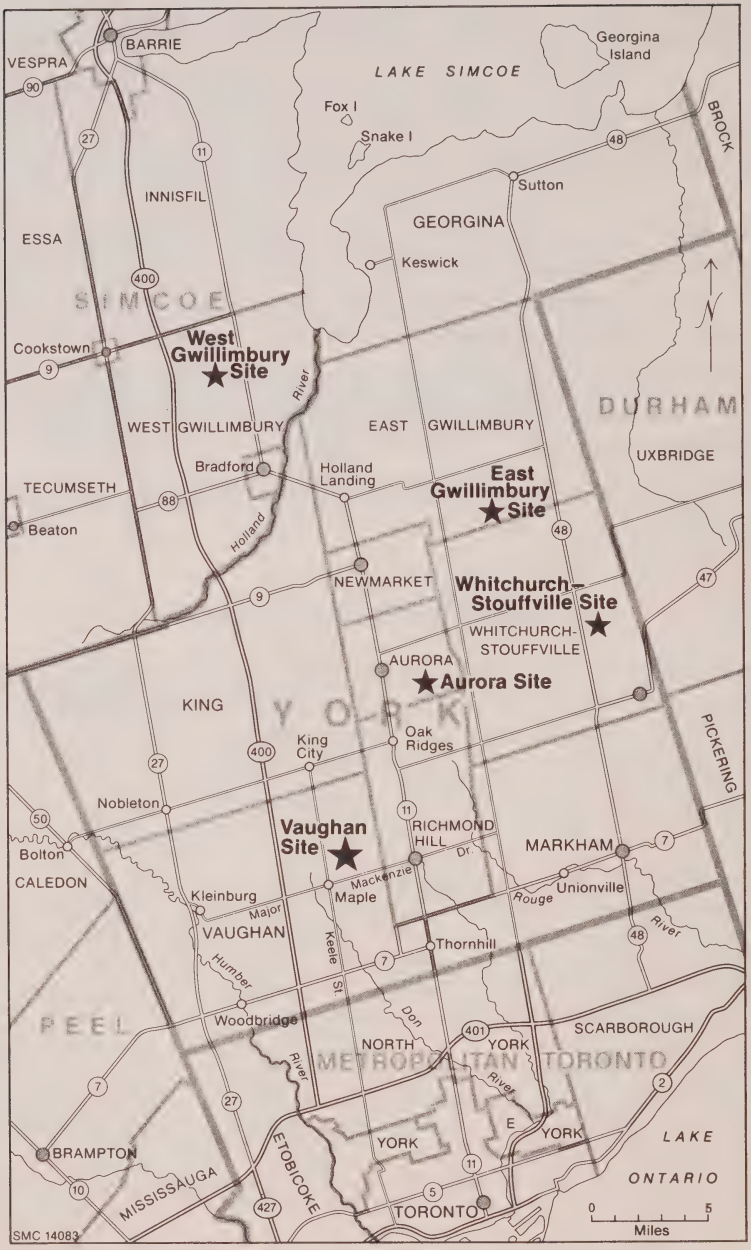
Resources Group and Messrs. J. H. Sanders, Keith Hutchinson, and Merlyn Baker, and the Attorney General for Ontario and the Ministry of the Environment and at the request of the Court in the presence of Commission Counsel, the Court being of the opinion that the Preserve Our Water Resources Group and Mr. Keith Hutchinson are groups or persons affected and are, therefore, entitled to have their evidence in chief and that of any witness called by them brought out for questioning by Counsel for the Preserve our Water Resources Group and Mr. Keith Hutchinson and are further entitled to have their Counsel cross-examine any witness called by the Commission Counsel or by any other person and the Court being further of the opinion that any other person affected has a right to call witnesses to cross-examine any witnesses who give evidence which affects them:

1. THE COURT DID ORDER that the question as hereinbefore set forth be answered in the negative, excepting as it relates to Messrs. Sanders and Baker, and

2. THIS COURT DID FURTHER ORDER that this was not a case for an award of costs.

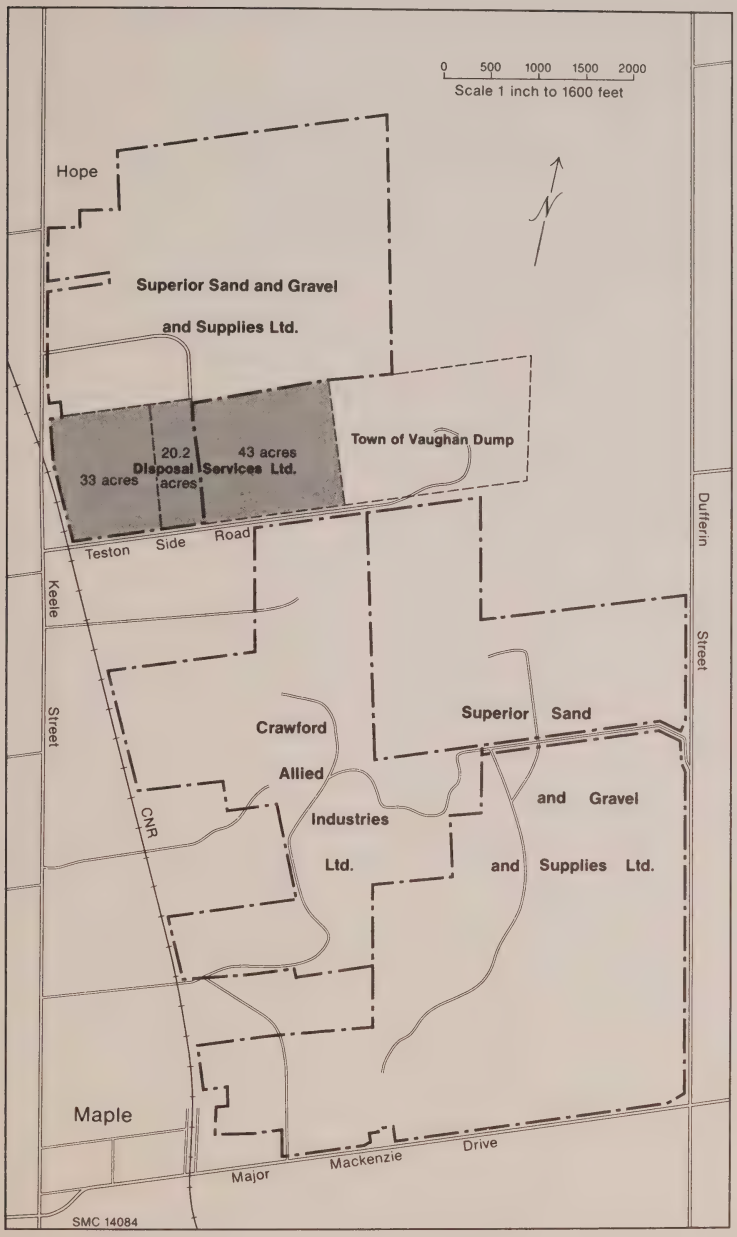
Assistant Registrar S.C.O.

APPENDIX "E"



★ *Landfill sites of the Waste Management Inc. group of companies.*

APPENDIX "F"



Enlargement of Vaughan Site shown on Appendix F.
THE MAPLE PITS